
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

NORTH PACIFIC STEAMSHIP COMPANY,
A CORPORATION CLAIMANT OF
THE STEAMSHIP "YUCATAN",
Appellant,
vs.
THE STATE OF OREGON, AND MULT-
NOMAH COUNTY,
Appellees.

APOSTLES

Upon Appeal from the District Court of the
United States for the District of Oregon.

Filed

MAK 4 - 1915

F. D. Monckton,
Clerk.

No. _____

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

THE NORTH PACIFIC STEAMSHIP
COMPANY, Claimant of the Steam-
ship "Yucatan,"

Appellant,

vs.

THE STATE OF OREGON, and MULTNOMAH
COUNTY,

Appellees.

Names and Addresses of the Attorneys of Record.

SANDERSON REED and C. A. BELL, Wilcox
Building, Portland, Oregon, for Appellant.

A. M. CRAWFORD, Salem, Oregon, and J. A.
BECKWITH, Fenton Building, Portland, Or-
egon, for the State of Oregon,

WALTER H. EVANS and GEORGE MOWREY,
County Court House, Portland, Oregon, for
Multnomah County.

CAPTION.

*In the District Court of the United States For the
District of Oregon.*

THE STEAMSHIP "YUCATAN", HER ENGINES,
BOILERS, TACKLE, APPAREL and FUR-
NITURE,

THE STATE OF OREGON,

Libellant.

THE NORTH PACIFIC STEAMSHIP
COMPANY,

Claimant,

MULTNOMAH COUNTY,

Cross Respondent.

Be it remembered that on May 25, 1914, there was filed in the District Court of the United States for the District of Oregon, a libel in which the State of Oregon was Libellant against the Steamship "Yucatan", her engines, boilers, tackle, apparel and furniture and on said date said Libellant duly filed a stipulation for costs in the sum of \$754.50, with the National Surety Company as surety; thereafter on May 2, 1914, a warrant of arrest and monition was duly issued out of said court and said Steamship "Yucatan" was duly arrested by the United States Marshal for the District of Oregon; thereafter on May 26, 1914, the North Pacific Steamship Company filed a claim

as the owner of said steamship "Yucatan" and filed a stipulation for costs in the sum of \$200.00 with the Southwestern Surety Insurance Company as surety, and also filed a stipulation to abide by and pay the decree in the sum of \$1509.00 with said Southwestern Surety Insurance Company as surety, which stipulation was duly approved by the Honorable Robert S. Bean, District Judge; whereupon said Steamship "Yucatan" was released from arrest and delivered to the claimant. On May 28, 1914, upon leave of the Court granted by order entered on said date said libellant filed an amended libel and on June 15, 1914, said claimant filed an answer to said amended libel, which said answer also included a cross libel against the County of Multnomah and prayed for process against said County of Multnomah; thereafter on July 3, 1914, said claimant filed a stipulation for costs upon the cross libel against the said Multnomah County, with M. J. Higley as surety, and a monition was duly issued out of said court citing said Multnomah County to appear and answer said cross libel; thereafter on September 5, 1914, said Multnomah County filed its answer and on October 14, 1914, said claimant, North Pacific Steamship Company filed a replication to the answer of said County of Multnomah; thereafter on October 26, 1914, upon leave of the court first obtained by order entered on said date, said libellant filed an amended libel; thereafter on October 27, 1914, said claimant filed an answer to said amended libel, which answer also included a cross libel against the County of Mult-

nomah; thereafter on October 28, 1914, an answer was filed to said cross libel by said County of Multnomah; thereafter on October 28th and 29th, 1914, said cause was tried by the Court before the Honorable Robert S. Bean, District Judge upon said second amended libel, answer and cross libel and answer of Multnomah County, and upon the evidence taken in open Court; thereafter on December 8, 1914, a decree was entered in said cause in favor of said libellant, State of Oregon, and awarding damages against said Steamship "Yucatan" and against said Southwestern Surety Insurance Company, stipulator upon said stipulation to abide by and pay the decree for the sum of \$1056.00 and its costs and dismissing said cross libel against said respondent, Multnomah County and awarding costs to said Multnomah County; thereafter on December 10, 1914, claimant filed in said cause a motion that the court make findings of fact which motion, by order entered December 14, 1914, was denied; thereafter on December 24, 1914, by an order entered on said date, the amount of the supersedeas bond to be given upon appeal in said cause was fixed by the court at \$2,000.00; thereafter on December 28, 1914, said claimant filed its notice of appeal, together with a supersedeas bond in the sum of \$2250.00 with the Southwestern Surety Insurance Company as surety, together with a notice of the filing of said bond, and on December 29, 1914, said claimant filed herein its assignment of error.

G. H. MARSH,
Clerk.

*In the District Court of the United States for the
District of Oregon.*

July Term 1914

Be it Remembered, That on the 26th day of October, 1914, there was duly filed in the District Court of the United States for the District of Oregon, a Second Amended Libel in words and figures as follows, to wit:

SECOND AMENDED LIBEL

*In the District Court of the United States, for the
District of Oregon.*

Amended Libel.

STATE OF OREGON,

Libellant,

vs.

STEAMSHIP YUCATAN, her engines, boilers, tackle,
apparel and furniture,

Respondent.

To the Honorable Robert S. Bean and Charles E.
Wolverton, Judges of the above entitled Court:

The amended libel of the State of Oregon, lessee of the U. S. S. Boston against the Steamship Yucatan, her engines, boilers, tackle, apparel and furniture,

and against all persons intervening for their interests in the same, in a cause of collision, civil and maritime, alleges as follows:

I.

That the defendant vessel, the Yucatan, is now within the Port of Portland, Oregon, within the County of Multnomah, and District of Oregon and within the jurisdiction of this Court.

II.

That at all times herein mentioned the libellant was and now is the lessee of, and in the direct charge and control of the U. S. S. Boston, and that by the terms of said lease libellant is bound to keep said vessel in good order and repair.

III.

That on the third day of March, 1914, about the hour of twelve o'clock, noon, the U. S. S. Boston was lying at her moorings on the East side of the Willamette River between the Broadway Bridge and the O. W. R. & N. Bridge in the Port of Portland, Oregon, and that the State of Oregon was the owner of a certain auto piano then situated on the star-board side of the gun-deck of the U. S. S. Boston; that about the hour of twelve o'clock, noon, on said date, Captain A. C. Paulsen, Master of the said Steamship Yucatan, moved said Steamship Yucatan away from the Globe Milling Company's Dock, which

is situated directly South of the bow of the U. S. S. Boston, that in so moving his vessel, the said Captain A. C. Paulsen carelessly and negligently handled her so that the said Steamship Yucatan collided with the said U. S. S. Boston; that in so moving the said Steamship Yucatan, her master, Captain A. C. Paulsen, was acting contrary to law in that he was not a licensed pilot for said river and did not have a licensed pilot aboard said vessel; that the position in which the said U. S. S. Boston was moored was legally authorized by the United States Engineers, the owners of the adjoining property and the lessee thereof; by reason of said carelessness and negligence and unlawful handling of said vessel and without fault on the part of the U. S. S. Boston, her officers or crew or the State of Oregon, her lessee, the said Steamship Yucatan collided with the said U. S. S. Boston in the Willamette River, in the Port of Portland, about the hour of twelve o'clock, noon, on the third day of March, 1914, and the State of Oregon received injuries to its property as hereinafter set forth; that said collision was wholly due to the fault and negligence and unlawful handling of the said Steamship Yucatan by her Master A. C. Paulsen in the respects herein before indicated

IV.

That in and by the collision aforesaid, the said auto piano, owned by the State of Oregon, of the value of \$700.00 was completely destroyed; and the U. S. S. Boston received damage as follows: forward

six inch gun ports smashed in and bent; frame of forward six inch gun port bent; inner skin near said port bent; starboard searchlight rail bent; canopy, stanchions and sockets on steam launch torn off; swinging boom broken in middle; the total damage to the U. S. S. Boston and her apparel and furniture being \$356.00; for which sum the State of Oregon has become liable by reason of a contract made for the repair of said damage; that the State of Oregon was put to the expense of \$54.50 for reporter's fees in making the record of the hearing held by the Board of Inquiry regarding said collision pursuant to requirement of the Regulations of the United States Navy; that the total damage suffered by libellant by reason of said collision is the sum of \$1110.50.

V.

That all and singular the premises are true and within the maritime and admiralty jurisdiction of this Court.

WHEREFORE libellant prays that process in due form of law and according to the practice of this Court may issue against the said Steamship Yucatan, her engines, boilers, tackle, apparel and furniture and that she may be condemned and sold for damages alleged in this libel; that the Court will hear the evidence which libellant will adduce in support of the allegations of its libel and will enter a decree in favor of the libellant for the sum of \$1110.50 the above mentioned damages and will order the same

to be paid and satisfied out of the said proceeds of the sale of the said Steamship Yucatan together with interest and with the costs of the libellant and will otherwise right and justice administer in the premises.

A. M. CRAWFORD and
J. A. BECKWITH,
Proctors for Libellant.

State of Oregon,
County of Marion,—ss.

I, Oswald West, being first duly sworn, say that I am the Governor of the State of Oregon, libellant in the within entitled cause, and that the foregoing amended libel is true as I verily believe.

OSWALD WEST

Subscribed and sworn to before me this 15th day of October, 1914.

J. E. ALLISON
Notary Public for Oregon.

Due service admitted at Portland, Oregon, 10-16 1914.

REED & BELL
Proctors for S. S. Yucatan.

GEORGE MOWRY
Deputy Dist. Atty. of Proctors for
Multnomah County.

Filed October 26, 1914 G. H. Marsh, Clerk.

And afterwards, to wit, on the 27th day of October, 1914, there was duly filed in said Court, and cause, an Answer of Claimant, and Cross-Libel in words and figures as follows, to wit:

Answer and Cross Libel.

To the Honorable Judges CHARLES E. WOLVERTON and R. S. BEAN, sitting in admiralty:

The answer of the North Pacific Steamship Company, a corporation of California, to serve also by way of cross libel at the suit of this claimant against the libelant and against the County of Multnomah, State of Oregon, in a cause of damage, civil and maritime, alleges as follows:

I.

That the claimant is a corporation organized and existing under the laws of the State of California, and is engaged in inter-state commerce as a common carrier of freight and passengers, owning and operating a number of steamships between San Diego, California, and Portland, Oregon;

II.

That the County of Multnomah is a corporation organized and existing under the laws of the State of Oregon, and that said County of Multnomah is in charge of the bridges in the City of Portland hereinafter mentioned, and has charge of the operation

of the same and of the employes thereof, and appoints and discharges said employes, and said employes are under the direction and control of said County of Multnomah;

III.

That the claimant admits that on the 3rd day of March, 1914, about the hour of twelve o'clock noon, the Steamship Boston was lying on the east side of the Willamette River between the Broadway Bridge and the O. W. R. & N. Bridge, generally known as the Steel Bridge, in the City of Portland, but denies that it has any knowledge or information sufficient to form a belief as to the ownership of the auto-piano named in the libel as belonging to the libelant, and puts the libelant on proof as to the ownership of the same;

IV.

Admits that about the hour of twelve o'clock noon on said date Captain A. C. Poulsen, master of the said Steamship Yucatan, moved said Steamship Yucatan away from the Globe Milling Company Dock which is situated directly south of the bow of the said Boston, but the claimant denies that in so moving his vessel the said Captain Poulsen carelessly or negligently handled her so that she collided with the said Boston, and denies that she collided with the said Boston at all, and denies that the said Captain Poulsen handled said steamship Yucatan carelessly or negligently, and denies that the alleged

collision mentioned in the libel, or any collision, was wholly or at all due to the fault or negligence or unlawful handling of the said Steamship Yucatan by her master, Captain A. C. Poulsen, in any respect, and denies that the position in which the said Boston was moored was regularly authorized by the United States engineers, and denies that the owners of the adjoining property or the lessees thereof have any right to authorize the location of the United States Steamship Boston;

V.

The claimant alleges and shows that the said Boston on the 3rd day of March, 1914, about noon, was lying just north of the said Globe Dock in the fairway of the channel within the City limits of the City of Portland, County of Multnomah, State of Oregon, and that the City of Portland is a municipal corporation organized and existing under the laws of the State of Oregon, and as such has made the following regulations regarding the harbor of the City of Portland:

“Vessels must not be anchored or moored within the fairway channel within the city limits, neither must they be moored or anchored within four hundred (400) feet of any bridge or ferry line.”

That the said Boston at said time was moored in the fairway about parallel with the current of the Willamette River, and at that time there projected from the starboard side of the said Boston several

guns of large size, which guns projected from the starboard side of the said Boston as she lay with her bow to the south some ten or twelve feet; that the said guns were not fast to the said Boston, but were easily moved; and easily movable; and that it is further provided by the regulations of the City of Portland covering the harbor, as follows:

“Section 6. The master or person having charge or command of any vessel coming to or lying alongside any wharf shall both before and during such time as such vessel is moored or stationed at such wharf, or vessel berthed at a wharf, have the anchors stowed, the jib-boom in, the lower yards topped and braced sharp up, and all other projections stowed within the rail of the said vessel.”

That said regulations are an ordinance of the said City of Portland, to-wit: Ordinance No. 17591, entitled AN ORDINANCE DEFINING THE DUTIES OF HARBOR MASTER AND REGULATING THE PORT OF THE CITY OF PORTLAND, AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH, and was passed by the Council of the said City of Portland on March 11, 1908, and approved by the Mayor of the City of Portland on March 17, 1908.

VI.

The claimant further shows that the said piano was standing close against the butt of said gun and between the butt of said gun and against the metal

covering or skin, as it is known, of the said Steamship Boston, whereby the slightest contact with the muzzle of said heavy gun would cause the said gun to swing on its trunnion or wheels standing on a circular track and cause the destruction of said piano; and that it was negligence and carelessness on the part of the libelant to leave said auto-piano in a position where such damage could occur, and it was negligence and carelessness on the part of the said Boston and the State of Oregon to moor the said Boston as aforesaid contrary to the ordinances of the said City of Portland, and that said ordinance has not been repealed, and the same is in force; and that is negligence on the part of the said Boston and the State of Oregon in so mooring said Boston in the fairway of the channel of the Willamette River as aforesaid; and that the said State of Oregon, the libelant, has possession and charge and control of the said Boston, and all the acts and things heretofore pleaded in regard to the said Boston and the said auto-piano and the said guns were done by the libelant;

VII.

That the claimant has no knowledge or information sufficient to form a belief as to whether or not the libelant by the terms of any lease is bound to keep the Boston in good order or repair, or in any repair.

VIII.

That there are five bridges in the City of Portland, all of which have draws, and all of which open upon

signal, subject to the regulations of the government of the United States and to rules and regulations of the Secretary of War, and the regulations have been issued by the Secretary of War that the said draws shall be promptly opened, and in case the draw cannot be immediately operated when the prescribed signal is given, a red flag or ball by day and a red light by night shall be conspicuously displayed;

IX.

The claimant shows and alleges that on the said 3rd day of March, 1914, about noon, the Steamship Yucatan was lying at the Globe Milling Company Dock aforesaid and wished to leave the same and pass north down stream through the Broadway Bridge hereinbefore referred to, and the said Yucatan signalled for the opening of the draw of the said Broadway Bridge, and got under way preparatory to move down stream, but said draw, however, did not lift or open; the said Yucatan signalled for the Broadway Bridge again and the said Bridge did not lift or open, and therefore, the master of the Yucatan sounded the danger signal, but the said bridge did not open until nineteen (19) minutes after the signal to open the same had been given, and further displayed no red flag or ball to indicate that the bridge would not open, but immediately upon the said bridge beginning to open the said Yucatan got under way to pass through said bridge, but because the river at that point is approximately only six hundred (600) feet wide, and the distance to the

Broadway Bridge from the said Globe Milling Company Dock is a distance of approximately thirteen hundred (1300) feet, it was unwise for the Yucatan to let go the line made fast to the said Globe Dock while the said bridge was still shut; that said bridge opened nineteen (19) minutes after the signal sounded, for which reason the said Yucatan swung on her line fast to the dock and in getting under way for said bridge, one of said guns projecting as aforesaid from the starboard side of the said Boston scraped against the starboard quarter of the Yucatan as she left the said Globe Milling Company Dock and entered three or more of the port holes or dead lights on the Yucatan at the same time damaging or cracking three (3) plates on the Yucatan, whereby the said gun swung on its trunnion and the said gun struck the auto-piano mentioned in the libel;

X.

The claimant further states and shows that before leaving said dock the cargo boom of the said Yucatan was made fast, but that the muzzle of the said gun scraping the side of the said Yucatan caught on the guy fastened to a bolt on the starboard side of the Yucatan, thereby putting such pressure on said guy as to tear loose the opposite guy amidships, which allowed the said cargo boom to swing and the force exerted by the said gun on the said starboard guy threw said cargo boom into the canopy and stanchions of the steam launch mentioned in the libel for a number of feet, and the claimant alleges and shows that the alleged

damage to the said steam launch was caused by the negligence and carelessness of the libelant in projecting said guns into the fairway aforesaid, and was not the negligence or carelessness of the said Steamship Yucatan, or of her master or officers;

XI.

The claimant further denies any knowledge or information sufficient to form a belief as to the value of the said auto-piano or the damage to the said Boston, and puts the libelant on proof of the same.

XII.

The claimant further shows that it has no knowledge or information sufficient to form a belief as to the cost of any court of inquiry, and alleges that any expense for any board of inquiry is immaterial and in no way connected with any claim that the State of Oregon may have against the said Steamship Yucatan or the claimant.

XIII.

The claimant denies any knowledge or information sufficient to form a belief as to any damage suffered by the libelant, and puts the libelant to proof of the same.

XIV.

The claimant further alleges that the said Steamship Yucatan was in charge of her duly licensed master, Captain A. C. Poulesn, who is and at all the

times herein mentioned was competent and able as master of the said Steamship Yucatan or other ships, and particularly to handle said Steamship Yucatan in the Willamette River at Portland, Oregon and all other places;

XV.

The claimant further alleges and shows that any damage claimed by the libelant was caused by the negligence of the libelant stationing said Boston in the fairway and in projecting the said guns further into the fairway of the channel whereby damage was caused to said piano, and caused the cargo boom to rip the canopy on the said steam launch, and by the negligence of the County of Multnomah, and State of Oregon, in not promptly opening said draw, and in putting in charge of said Broadway Bridge a bridge tender or operator not familiar with the bridges or electricity by which the said bridge was and is operated, and not familiar with the river and the regulations covering the movements of boats and vessels;

XVI.

That the damage to the said Yucatan by reason of the contact with the said gun on the Boston is the sum of twelve hundred dollars (\$1200.00), the cost of repairing and replacing plates, and that demand has been made in writing upon the said County of Multnomah, State of Oregon, for the payment to this claimant of the said sum of twelve hundred dollars (\$1200.00)

XVII.

That all and singular the premises are true and in the admiralty and maritime jurisdiction of this honorable court.

WHEREFORE, this claimant and cross libelant prays that this honorable court will pronounce against the amended libel and dismiss the same without costs, and that the State of Oregon, and County of Multnomah, State of Oregon, be required to pay to this claimant damages for the injury to the said Yucatan in the sum of twelve hundred dollars (\$1200.00), and that the court give to this claimant such other and further relief as in law and justice it may be entitled to receive.

NORTH PACIFIC STEAMSHIP COMPANY,

By SANDERSON REED.

REED & BELL,

Proctors.

State of Oregon,

County of Multnomah,—ss.

I, M. J. Higley, being first duly sworn, depose and say that I am the agent of the North Pacific S. S. Co., claimant in the above entitled action; and that the foregoing Answer and Cross Libel is true as I verily believe.

MARTIN J. HIGLEY

Subscribed and sworn to before me this 27th day of October, A. D. 1914.

ETHEL C. GRAHAM,

[Seal]

Notary Public for Oregon.

State of Oregon,
County of Multnomah,—ss.

Due service of the within Answer and Cross-Libel by copy as prescribed by law, is hereby admitted, at Portland, Oregon, this day of October, 1914.

GEORGE MOWREY,
Deputy District Attorney, of Attorneys for
Multnomah County.

J. A. BECKWITH,
Attorney for Libellant, State of Oregon.

Filed October 27, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 28th day of October, 1914, there was duly filed in said Court, and cause an Answer to Cross-Libel in words and figures as follows, to wit:

Answer to Cross-Libel.

To the Honorable R. S. BEAN and CHARLES E. WOLVERTON, Judges of the above entitled court sitting in admiralty:

The County of Multnomah, State of Oregon, for answer to the Amended Cross Libel of the North Pacific Steamship Company alleges and propounds as follows:

I

Admits the allegations of the first article of said Amended Cross Libel.

II

Admits the allegations of the second article of said Amended Cross Libel.

III

Admits the allegations of the fifth article of said Amended Cross Libel.

IV

As to the allegations contained in the sixth article of said Amended Cross Libel, this respondent has no knowledge or information sufficient to form a belief as to the truth or falsity of any of said allegations.

V

Answering the eighth article of said Amended Cross Libel, this respondent admits that there are five bridges in the City of Portland all of which have draws and all of which open up on signals, subject to the regulations of the Government of the United States and to rules and regulations of the Secretary of War, that said draws shall be promptly opened, and that in case a draw cannot be immediately operated when the prescribed signal is given, a red flag or ball by day or a red light by night shall be conspicuously displayed, but this respondent further alleges the truth to be that after the proper signals for any one of said bridges have been, it is the duty of the persons operating said bridge to cause the draw to be opened without unreasonable delay with

reference to the state of the traffic at the time, the construction of the draw or lift, and the conditions existing at the time such signal is given.

VI

Answering the ninth article of said Amended Cross Libel this respondent admits that on the 3rd day of March, 1914, about noon, the said Steamship Yucatan was lying at the Globe Milling Company dock mentioned in said amended Cross Libel, and wished to leave the same and pass north down stream through said Broadway bridge, and that the said Yucatan signalled for the opening of the draw of said Broadway bridge and got under way preparatory to move down stream, and that the said draw at the exact time of said signal did not lift or open, and that the said Yucatan signalled for the Broadway bridge again, and that at the exact time of said second signal the said draw did not lift or open, and that thereafter the master of the said Yucatan sounded the danger signal, but this respondent denies that the said bridge did not open until nineteen minutes or more than fourteen minutes after the first signal to open the same had been given, but admits that no red flag or ball was displayed to indicate the said bridge would not open, and this respondent denies that immediately upon said bridge beginning to open or any less than four minutes thereafter the said Yucatan got under way to pass through said bridge, and this respondent admits that the river at said point is approximately only six hundred (600) feet wide and that the dis-

tance to the Broadway bridge from the said Globe Milling Company dock is a distance of approximately thirteen hundred feet (1300), but this respondent denies that it was or would have been unwise for the said Yucatan to let go the line made fast to the said Globe Milling Company dock while the said bridge was still shut, and as to the remaining allegations contained in said ninth article, this respondent has no knowledge or information of any of said allegations sufficient to form a belief as to the truth or falsity of any of said allegations and therefore requires proof of the same, except that this respondent admits that there was at said time a collision between the said Yucatan and the said Steamship Boston, but this respondent denies that said collision was in any manner caused by any failure or delay of the said Broadway bridge to open.

VII

As to the allegations contained in the tenth article of said Amended Cross Libel, this respondent has no knowledge or information sufficient to form a belief of the truth or falsity of any of said allegations.

VIII

Answering the fourteenth article of said Amended Cross Libel, this respondent admits that the said Yucatan at said time was in charge of said Captain A. C. Paulsen, who was at said time her master, but denies that the said A. C. Paulsen was at said time licensed, competent or able to handle the said Yuca-

tan or any other vessel in the Willamette River at Portland, Oregon, or at any other place in said Willamette River.

IX

Answering the fifteenth article of said Amended Cross Libel, this respondent denies that the damage claimed by the Libelant or by the Cross Libelant, or by any one was caused by any negligence of the County of Multnomah, State of Oregon, either in not promptly opening said draw or in putting in charge of said Broadway bridge a bridge tender or operator not familiar with the bridges or electricity by which the said bridge was operated, or not familiar with the river or regulations covering the movements of boats or vessels, and this respondent further denies that said damage or any damage whatsoever was caused by any negligence whatsoever of the said County of Multnomah, State of Oregon, and denies that said draw did not promptly open, and denies that the bridge tender in charge of said Broadway bridge was not familiar with bridges or electricity by which said bridge was operated, or with the river or the regulations covering movements of boats or vessels thereon. This respondent further denies that there was any negligence whatsoever on the part of said Multnomah County or State of Oregon, or that there was any failure whatsoever of said bridge to open promptly.

X

As to the allegations contained in the sixteenth article of said Amended Cross Libel, this respondent has no knowledge or information sufficient to form a belief as to whether the damage to the said Yucatan by reason of the said contact with the said gun on said Boston, or for any other reason or at all, is the sum of Twelve Hundred Dollars (\$1200.00) or any other sum, and therefore this respondent requires proof of same, but this respondent admits that a demand has been made in writing upon the said County of Multnomah, State of Oregon, for the payment to said claimant of the said sum of Twelve Hundred Dollars (\$1200).

XI

Answering the seventeenth article of said Amended Cross Libel, this respondent denies that all and singular the premises are true except as hereinbefore expressly admitted, but this respondent admits the jurisdiction of this Honorable Court.

XII

Further *further* answering said Amended Cross Libel, this respondent propounds and alleges that at the time the first signal mentioned in said amended cross libel was given, (the same being mentioned in the 9th article of said amended cross bill) the said steamship "Yucatan" was lying at the said Globe Milling Company dock on the east side of the said Willamette river south, or upstream, from the said Broadway

bridge, and that at the time when said first signal was given, the said "Yucatan" was headed upstream and was fastened to said dock by her stern line, and that at said time of said first signal it was the intention of the Master of said "Yucatan" to turn said "Yucatan" around and to steer her bow-first through said Broadway bridge, but that at the time of said first signal the said "Yucatan" had not yet begun to make said turn; that shortly after said first signal, the said "Yucatan" began to make said turn, and that at the time when the said second signal mentioned in said Amended Cross Libel was given, the said "Yucatan" was making said turn, her stern being fastened to said dock at said time by said stern line, and that at the said time of said second signal, the bow of the said "Yucatan" was only about twenty degrees off said dock; that at said time the traffic over the said bridge, consisting of streetcars, pedestrians and vehicles of all kinds, was extremely heavy, it being the noon hour of the day, and about the time of said first signal the bridge tender in charge of said bridge began to prepare to clear said bridge of said traffic, and at the said time of said second signal was so preparing to clear said bridge of said traffic so as to open said draw; that the current in said river at said time at the place where said "Yucatan" was making said turn was about two knots an hour, and that said "Yucatan" was and is a ship of about 360 feet in length and that in turning around at said place in the manner above described a vessel of that kind, size and character, a careful and skill-

ful pilot and one who was familiar with the speed and set of the current and the depth of the water in said Willamette river in said place at said time, would have caused such vessel to let go of said stern line and to get underway for said draw as soon as the bow of said vessel reached a point about one hundred degrees off said dock; that the said A. C. Paulsen, the said Master of the "Yucatan" was not at said time a licensed pilot for said Willamette river at Portland harbor, and that at said time there was no licensed pilot for said waters aboard said ship, and at said time the said A. E. Paulsen was not familiar with the speed or set of the current, the depth of the water or the character of the bottom of the said Willamette river at said place, and at said time and place was carelessly, negligently and unlawfully moving said vessel in said Willamette river and Portland Harbor without being licensed as a pilot for said waters and without having a licensed pilot for said waters aboard said vessel, and without being himself familiar with the said local conditions of said waters; that from the time of said first signal it took said "Yucatan" in making said turn approximately fifteen minutes to reach said point where the bow of said "Yucatan" was one hundred degrees off said dock; that the said Broadway bridge at the time when the bow of said "Yucatan" reached said point of one hundred degrees was already open, would have been, and in fact was, fully open and ready for the said "Yucatan" to go through several minutes before said "Yucatan," if at said point of one hundred degrees she had let

go of said stern line and got underway for said bridge, would have reached said bridge; but that when the said "Yucatan", in making said turn reached said point where the bow of said vessel was about one hundred degrees off said dock, the said A. C. Paulsen carelessly and negligently failed to cause said "Yucatan" to let go of said stern line or to get underway for said draw, but carelessly, negligently and unskillfully caused said "Yucatan" to hang on to said stern line and not to let go of the same or to get underway for said draw until the bow of said "Yucatan" had reached a point one hundred and fifty degrees off said dock, at which point the said "Yucatan" did in fact let go said stern line and make for said draw; and that said A. C. Paulsen at said point found himself unable and incompetent to handle said vessel at said place, and thereupon sounded the danger signal; and that the said A. C. Paulsen at said time was not familiar with the exact location of the said Steamship "Boston" relative to the Globe Milling Company dock, or the Steamship "Yucatan", and not being able or competent, as aforesaid, to handle said "Yucatan" in said Willamette river or Portland harbor, the said A. C. Paulsen did then and there carelessly, negligently and unskillfully handle, direct and steer the said "Yucatan" in such a way that the said "Yucatan" did then and there collide with the said gun on the said "Boston" mentioned in said Amended Cross Libel, and that the said collision herein mentioned was the same collision as is mentioned and described in said Amended Cross Libel;

that immediately after said collision, said "Yucatan" went on through said Broadway bridge, which, at said time, was fully open; that the said collision was caused entirely by the aforesaid negligence, carelessness and unskillfulness of the said A. C. Paulsen, and not otherwise; that the said Broadway bridge on said occasion was open for a period of about seven minutes, and that this respondent was not in any manner careless or negligent in handling or operating said bridge, and did not in any manner or degree cause or bring about said collision; that all and singular these premises are true.

WHEREFORE, this respondent prays that this Honorable Court will pronounce against the demand of said Amended Cross Libelant in said Amended Cross Libel mentioned, with costs.

WALTER H. EVANS,
District Attorney for Multnomah Co. Oregon.

GEORGE MOWREY, ..
Deputy District Attorney for Multnomah
County, Oregon.
Proctors for Respondent, Multnomah County,
Oregon.

State of Oregon,
County of Multnomah,—ss.

I, Rufus C. Holman, being first duly sworn, upon oath depose and say: That I am a member of the Board of County Commissioners of the within named defendant County of Multnomah, State of Oregon;

that I have read the within and foregoing answer and know the facts therein stated, and that the said answer is true as I verily believe.

RUFUS C. HOLMAN.

Subscribed and sworn to before me this 28th day of October, A. D. 1914.

G. H. MARSH,
Clerk.

State of Oregon,
County of Multnomah,—ss.

Due and legal service of the within Answer is hereby accepted in Multnomah County, Oregon, this 28th day of October, 1914; by receiving a copy thereof, duly certified to as such by Walter H. Evans, District Attorney and Attorney for plaintiff.

REED & BELL,
Proctors for North Pacific Steamship Company.

J. A. BECKWITH,
Proctor for State of Oregon.

Filed October 28, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on Tuesday, the 8th day of December, 1914, the same being the 32nd Judicial day of the Regular November, 1914, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Decree.

This case having been heard on the pleadings and proofs, and having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, it is now

ORDERED, ADJUDGED and DECREED by the Court, that the libellant, the State of Oregon, recover herein against the Steamship Yucatan, her engines, boilers, tackle, apparel and furniture, and the North Pacific Steamship Company and Southwestern Surety Insurance Company, stipulators, the sum of One Thousand and Fifty-six (\$1056.00) Dollars and \$132.94, costs and disbursements, and that the said Steamship Yucatan, her engines, boilers, tackle, apparel and furniture be condemned therefor, and it is further

ORDERED, ADJUDGED and DECREED that unless the said stipulators for costs and value on the part of the claimant of said Steamship Yucatan do cause the engagement of their stipulations to be performed within ten (10) days that execution should issue against them to enforce satisfaction of this decree, and it is further

ORDERED that the cross libel filed against Multnomah County be and hereby is dismissed with costs, and is is further

ORDERED and ADJUDGED that said Multnomah County recover herein against the North Pacific Steamship Company and Southwestern Surety

Insurance Company, stipulator, the sum of \$139.20, costs as taxed, and it is further

ORDERED that unless this decree be satisfied the said stipulator for costs on the part of the cross libellant, the North Pacific Steamship Company, cause the engagement of its stipulation to be fulfilled within ten (10) days that execution should issue against them to enforce satisfaction of this decree.

Dated this 8th day of December, 1914.

R. S. BEAN,
United States District Judge.

Filed December 8, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 10th day of December, 1914, there was duly filed in said Court, and cause a Motion for Findings, in words and figures as follows, to wit:

Motion for Findings.

Honorable R. S. BEAN, Judge of the above entitled court:

Now comes the claimant, the North Pacific Steamship Company, and moves the court that findings of fact be made by this honorable court on the following points, to-wit:

I.

As to whether or not the Boston was lying in the fairway.

II.

As to the wind and the current on March 3, 1914.

III.

As to whether the guns on the Boston projected from the Boston, and at what distance.

IV.

As to harbor regulations in the City of Portland regarding projections from ships.

V.

As to United States regulations as to the opening of draws on bridges in the City of Portland.

VI.

As to whether or not the draw or lift on the Broadway Bridge opened pursuant to regulations or opened at all.

VII.

As to the time taken by the Broadway Bridge in the matter of opening or lifting.

VIII.

As to whether or not any signal was given from

the Broadway Bridge that the draw would not open on signal as prescribed by regulations.

IX.

As to how the damage to the launch on the Boston was caused.

X.

As to whether the Yucatan went full speed ahead or astern from the Globe Dock.

XI.

As to whether or not the draw was up or begun to be lifted when the Yucatan put on full speed.

XII.

As to the damage done to the Steamship Yucatan by the gun on the Boston.

XIII.

As to the experience of the captain of the Yucatan in the Portland harbor, and as to the issuance of a local pilot's license to the captain of the Yucatan.

XIV.

As to the width of the river at the Globe Milling Company Dock, and as to the distance from the Globe Dock to the Broadway Bridge.

SANDERSON REED and

C. A. BELL

Proctors for claimant, North Pacific Steamship Company.

State of Oregon,
County of Multnomah,—ss.

Due service of the foregoing Motion by copy as prescribed by law, is hereby admitted, at Portland, Oregon, this 10th day of December, 1914.

J. A. BECKWITH,
Attorney for Libellant.

WALTER H. EVANS,
District Attorney for County of Multnomah.
By T. M. DUFFY, Deputy.

U. S. District Court Filed Dec. 10, 1914,

G. H. Marsh, Clerk District of Oregon.

And afterwards, to wit, on Monday, the 14th day of December 1914, the same being the 37th Judicial day of the Regular November, 1914, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Now, at this day, come the libellant by Mr. John A. Beckwith, of proctors and the intervening libellant by Mr. Walter H. Evans, of proctors, and the claimant by Mr. C. A. Bell, of proctors; whereupon, this cause comes on to be heard upon the motion of the claimant that the Court file herein findings of fact; on consideration whereof, IT IS ORDERED AND ADJUDGED that said motion be and the same is hereby denied.

And afterwards, to wit, on the 28th day of December, 1914, there was duly filed in said Court, and cause a Notice of Appeal, in words and figures as follows, to wit:

Notice of Appeal.

To the State of Oregon, and John A. Beckwith, proctor for the said State of Oregon:

To the County of Multnomah, and to the District Attorney of Multnomah County, State of Oregon, proctor for the said County of Multnomah:

You and each of you will please take notice that the North Pacific Steamship Company, claimant in the above entitled suit, hereby appeals to the circuit court of appeals for the ninth circuit from the decree entered in the above entitled suit on the eighth (8th) day of December, 1914, whereby it is ordered and decreed that the State of Oregon recover against the Steamship Yucatan, her engines, boilers, tackle, apparel and furniture, and the North Pacific Steamship Company, and the Southwestern Surety Insurance Company, stipulators, the sum of ten hundred and fifty six dollars (\$1056.00) and one hundred thirty two and 94-100 dollars (\$132.94), costs and disbursements, and that the said Steamship Yucatan, her engines, boilers, tackle, apparel and furniture be condemned therefor, and wherein it is further ordered and adjudged that the said County of Multnomah recover against the North Pacific Steamship Company and the Southwestern Surety Insurance Com-

pany the sum of one hundred thirty nine and 20-100 dollars (\$139.20), costs as taxed, and from all of said decree.

SANDERSON REED and
C. A. BELL,
Proctors for the Claimant.

State of Oregon,
County of Multnomah,—ss.

Due service of the foregoing Notice of Appeal by copy as prescribed by law, is hereby admitted, at Portland, Oregon, this 24th day of December, 1914.

J. A. BECKWITH,
Attorney for State of Oregon.

WALTER H. EVANS,
Attorney for County of Multnomah.

By GEORGE MOWRY,
Deputy.

Filed December 28, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 29th day of December, 1914, there was duly filed in said Court, and cause an Assignment of Errors, in words and figures as follows, to wit:

Assignment of Errors.

The claimant, North Pacific Steamship Company, presents the following assignments of error:

I.

Error of the court in finding that there was negligence on the part of the master of the Yucatan in the matter of handling the Yucatan on leaving the Globe Dock.

II.

Error of the court in finding that the absence of a harbor pilot was negligence on the part of the master of the Yucatan.

III.

Error of the court in finding that the operators of the Broadway Bridge on the part of Multnomah County were not careless or negligent.

IV.

Error of the court in failing to find that the action of the operators of the Broadway Bridge contributed to the accident.

V.

Error of the court in not finding as to the position of the Boston in the fairway.

VI.

Error of the court in not finding that the projection of the guns from the Boston were against the local ordinances and regulations of the harbor.

VII.

Error of the court in not finding that it was error on the part of the Boston to lie in the fairway with the guns projecting the number of feet shown in the testimony.

VIII.

Error of the court in not finding as to the harbor regulations of the City of Portland, and the United States regulations as to the opening of draws on bridges in the City of Portland.

IX.

Error of the court in not finding the facts as to how the damage to the launch on the Boston was caused.

X.

Error of the court in not finding as to the damage to the Yucatan.

XI.

Error of the court in not finding as to whether or not the draw was up or had begun to be lifted when the Yucatan put on full speed.

XII.

Error of the court in rendering and entering a decree in favor of the libelant and against the Yucatan and the claimant.

(Testimony of H. H. Hilton)

XIII.

Error of the court in not rendering and entering a decree in favor of the claimant and against the libellant and the County of Multnomah for the amount claimed and proven by the claimant, or at least dividing the damages.

REED & BELL,
Proctors for Claimant.

Filed December 29, 1914. G. H. Marsh, Clerk.

And afterwards, to wit, on the 7th day of December, 1914, there was duly filed in said Court, and cause, the Evidence, in words and figures as follows, to wit:

Evidence.

Portland, Oregon, Wednesday, October 28, 1914.

H. H. HILTON

A witness called on behalf of the Libellant, being first duly sworn, testified as follows.

DIRECT EXAMINATION.

Questions by Mr. BECKWITH:

Mr. Hilton, during the period of time from November, 1913, until after this collision happened, what was your occupation?

(Testimony of H. H. Hilton)

A. Clerk of the Naval Board, and assistant in the office of the Asjutant-General of the State of Oregon.

Q. What commision did you hold in the Oregon Naval Militia? A. Ensign.

Q. What commision have you held in the United States Navy? A. Midshipman.

Q. Did you have anything to do with making arrangements regarding the mooring of the Boston, at the position she was in at the time this collision occurred?

A. Yes, sir; I acted under the orders of the Naval Board, and acted as the represenative of the Naval Board in moving the Boston.

Q. Did you take this matter up with the United States Engineer's Office.

A. Yes, sir; through—both through the—after obtaining plats and information, I forwarded for permission, through this local office, to the office in Washington.

Q. From where did you receive the blue prints, the plats that you furnished them?

A. From the office in the Worcester Building, of the Port of Portland.

Q. Wasn't it the Municipal Dock Commision in there? A. Yes, sir.

Q. Now, state to the Court what this is.

A. This is the correspondence relative to the permission granted for the Boston to drive one dolphin inside of the harbor line.

(Testimony of H. H. Hilton)

COURT: What do you mean, inside of the harbor line? A. In the fairway.

COURT: Between the harbor line and the shore?

A. No, sir; out in the fairway.

Q. Towards the center of the stream.

A. Towards the center of the stream, from the harbor line. Then it shows also the other dolphin which was to be driven outside the harbor line; that is, between the harbor line and the shore line, and this—at the time it was understood that the Boston was to moor there—and this is the permission as I filed it for the Naval Board.

Q. That blue print was attached to it at the time?

A. Yes; it was made in quadruplicate, and this was one of the copies.

Q. Was this matter taken up with the harbor-master?

A. The harbor-master took us down there numerous times, different members of the Naval Board and myself, and other people that had charge of moving the Boston, and helped select this site, saying that he thought — — —

Mr. REED: I object to what he said he thought.

Q. Never mind. When was the vessel moved to her moorings where she was on March 3rd? Say month, it will be sufficient.

A. I believe it was in November.

Q. Of what year? A. 1913.

Q. Were you ever in the office of the Army Engineers relative to this—driving this pile?

(Testimony of H. H. Hilton)

A. We did—all of our permission was gotten through correspondence.

Mr. REED: I will point out to your Honor and object to this on the ground that it doesn't say a word about the Boston.

Mr. BECKWITH: We are merely offering to show he had permission to drive piling.

Mr. REED: It shows they can put a dolphin there, but not a word about a right to put her or where she should be put; only a dolphin. If they should depend on that for their case, the boat might project westward to the — — —

Mr. BECKWITH: I offer it in evidence.

Correspondence marked "Libellant's Exhibit A."

COURT: Consider it read, and proceed.

Mr. BECKWITH: With this blueprint that went into evidence, I offer an enlargement of that blue print. This is a scale at 50 feet to one inch.

Mr. REED: May I ask some questions about it?

COURT: Yes.

Questions by Mr. REED:

Q. Mr. Hilton, is that blue print along the lines that you testified about at the investigation on the Boston? You testified then, I believe, did you not, she was nine feet east of the harbor line, and the breadth of her beam inside of the channel?

A. I did not testify where that dolphin was at all.

Q. Not the dolphin. I mean the Boston, in answer to a question by Mr. Reed at that hearing. The question was asked; "Now, the dolphin that

(Testimony of H. H. Hilton)

is aft here, this boat lies on the river side of that dolphin, doesn't it? A. Yes, sir. Q. And that is nine feet within or towards the center of the channel from the harbor line? A. Yes, sir. Q. So that you have got that nine feet and in addition the breadth of the ship outside of the harbor line? A. Astern? Q. Astern, yes. A. Well, that is before this dolphin carried away. Q. Yes, well, how was it March 3rd? A. Well, the dolphin had carried away—let's see — — — Q. I know, but the relative positions? A. Astern, it was; yes, it was just about that. Q. Yes, sir. So she was really nine feet and in addition to that, the width of the boat, whatever that may be, depending on how her bow lay, toward the center from the harbor line? A. Yes, sir. The intention was that we should pull in when the water rose enough to allow us to go further on the beach. Q. Why? A. Because we would have more depth of water." Is that what you swore to?

A. Yes, sir.

Q. Then, is that blue print that counsel offered, showing that she was nine feet inside the harbor line, as you indicate. Mark it there before it is introduced in evidence, please.

Mr. BECKWITH: The blue print itself shows it.

Mr. REED: No, this one; that one is already in. Just mark the distance.

COURT: Show where the Boston lay.

Mr. BCEKWITH: That is what I will bring out. That is what I am offering the blue print for.

(Testimony of H. H. Hilton)

Mr. REED: He says nine feet inside the harbor line, and then her breadth and the gun projecting besides.

Examination continued by Mr. BECKWITH.

Q. Now, this enlargement here. Can you see this? A. Fairly well.

Q. Show where this Globe Milling dock is on this blue print. (Larger blueprint).

A. The furthest corner - - -

Mr. REED: If the Court will pardon me, is this in evidence? And before it is offered, I would like to have it completed, showing - - -

COURT: You can mark that later. I understand this is simply an enlargement of the other plat, and doesn't show the location of the Boston at all.

Mr. REED: Beg pardon.

Q. I will show this now by questions. Where is the Globe Milling dock on this?

A. (Indicating) This is the corner of the Globe Milling dock. The downstream corner.

Q. The sand dock which was used by the Boston?

A. (Indicating) This is the sand dock just astern of the Boston.

COURT: How is it marked there on the map?

A. Sand and gravel dock.

Q. Where was this dolphin driven? The after dolphin?

A. The after dolphin was driven approximately 90 feet from the south corner - - -

Q. Which way?

(Testimony of H. H. Hilton)

A. (Continuing) Of the sand and gravel dock upstream, and from that line it was practically nine feet out at that point from the harbor line.

COURT: Nine feet into the channel?

A. Nine feet into the channel, but that wasn't—that wasn't in that position when this collision occurred.

Q. Now, where was the other dolphin you spoke of?

A. The other dolphin was in a line between the north corner of the sand and gravel dock, and a point determining the harbor line on the Globe Milling Dock 194 feet from the after dolphin, the dolphin that was driven in the fairway.

Q. Then they were 194 feet apart?

A. Yes, sir.

Q. At the time this accident happened, which dolphin was there?

A. The forward dolphin; the one that was not in the fairway was the only one still remaining.

COURT: You say the forward. The forward dolphin was in the harbor line, wasn't it, inside the harbor line? A. Yes, sir.

COURT: Well, you mean was outside the harbor line. A. Yes, sir.

Q. As a matter of fact, was it not just about on the line? A. Yes.

Q. Show where this sewer comes out on the east side, this Irvington sewer comes down through there. How far is that from this forward dolphin?

A. This big sewer, concrete sewer, comes out directly inshore from this forward dolphin, about—

(Testimony of H. H. Hilton)

just about nine feet from the inner side of the dolphin.

Q. Tell the Court the length and beam of the dolphin.

A. The length of the Boston is 277 1-2 feet long.

COURT: Over all?

A. Over all; from stem to stern.

Q. What is the beam?

A. Its biggest beam, its largest beam is 42.2 feet.

Q. Now, what is the length of the forecastle of the Boston, from the house to the peak?

A. The length of the forecastle of the Boston is 63 feet, from the outside—from the peak of the superstructure to the bow, and at that same point, it is 37 feet broad.

Q. What is the distance from the dolphin the forward dolphin, to the nearest corner of the Globe Milling dock?

A. From the bow to the nearest corner is 111 feet.

Q. The bow of the Boston as it now stands?

A. Yes, as it now stands is 111 feet.

Mr. REED: From where, please?

A. From the nearest corner of the Globe Milling dock to the bow of the Boston.

COURT: He asked about piling.

Q. Figure out the distance from that.

A. That dolphin, as I measured it, was - - -

Mr. REED— Is now.

COURT: Yes, now.

A. (Continuing) Was 28 feet from the bow; that makes it 138 feet that the dolphin was from

(Testimony of H. H. Hilton)

the nearest corner of the Globe Milling dock now.

Q. It is in the same place it was in the first place.

A. Yes.

Q. Then it is 139 feet from the nearest corner of the Globe Milling dock to the forward dolphin?

A. Yes, sir.

Q. And 194 feet from the forward dolphin to the place where the after dolphin was?

A. Yes, sir.

Q. Have you ever taken soundings in there?

A. Yes, sir; with the aid of the harbormaster at various times in small boats, we have sounded everywhere from below the sand and gravel dock up to the Globe Milling dock.

Q. What is the nature of the bottom there?

A. The bank is generally of what they call cement gravel, almost approaching a hard pan or rock.

Q. What is the nature of the bank along here?

A. The Railroad Company, besides this gravel foundation, have put in retainers or big stone blocks, and large rocks to keep their fairway—their road bed from sliding.

Q. Where was the Boston—now, this six inch gun, the forward six inch gun on the starboard side of the Boston—are you familiar with the location of that gun?

A. Yes, sir.

Q. How far does that gun extend outside the side of the vessel?

A. From where the shutters were I measured it

(Testimony of H. H. Hilton)

about eight feet and eight inches, from where the shutters were to the muzzle of the gun.

Q. There is a six pounder gun sponson just forward of this gun, is there not? A. Yes, sir.

Q. Tell the court the nature of that gun sponson, what it is?

A. It is a platform built up a few feet from the gun deck, where a small carriage is put, for mounting a six pounder, rapid fire gun. It projects out through the shutters that are in this sponson.

Q. What is the nature of the sponson—square or round?

A. It is semi-circular. It is just a semi-circle, extending out over the ship's side.

Q. What is the diameter of this sponson on the Boston?

A. I have never measured it.

Q. Have you measured how far this sponson extends along from the side of the vessel?

A. Yes, I have estimated it, as near as possible; practically extends—projects out over the side of the ship two feet and eight inches.

Q. And what is the top of this sponson used for?

A. For the heaving the lead, that is the chains.

Q. Isn't there a search light up there?

A. No, sir; a searchlight platform; no searchlight.

Q. Isn't there a little platform outside this sponson that they call the chains? A. Yes.

Q. What is the width of that?

(Testimony of H. H. Hilton)

A. That is one foot.

Q. That would make a total of three feet eight inches?

A. Yes, sir.

Q. And the gun, the six inch gun, is aft of the sponson? A. Yes.

Q. About how far is that six inch gun aft the sponson?

A. About five or six feet, I should say.

Q. The six inch gun is not in the sponson?

A. No, sir.

Q. Then that would make the six inch gun extend about five feet beyond the extreme side of the Boston? A. Yes, sir.

Q. There is more than one sponson on the vessel?

A. Yes, sir.

Q. Just show the Court on this little diagram, how the sponsons are located.

A. There are four in all of them. One right on the starboard bow, that was hit; directly on the other side there is the mate to it; then astern on the—where the superstructure deck terminates on either side, there is two—there is another similar sponson, making four sponsons in all.

Q. Those sponsons are composed of iron, are they, the same as the vessel? A. Yes, sir.

Q. Do you know where the Boston, what part of the Boston, now, touches the forward dolphin?

A. Yes, sir, it is now resting just about in the

(Testimony of H. H. Hilton)

center of the billboard. That is where the anchor is kept.

Q. That is the forward anchor?

A. The forward anchor on the port side.

Q. How far is that—are you familiar with the place where the Boston touched the sponson at the time this accident happened March 3rd?

A. Yes, sir; at that time it was leaning up against a boat boom, which was alongside the boat about at a point where the superstructure deck terminates, and where the sheet anchor is kept in its billboard.

Q. What is the distance between these two points?

A. 40 feet.

Q. Was the Boston's position shifted after the 3rd of March? A. Yes, sir.

Q. What position was it shifted to? Which way?

A. Shifted down the stream from the after—from where the sheet anchor stay is, to where the regular anchor is.

Q. That is, she was dropped astern 40 feet?

A. Yes, sir.

Q. Now, figure out the position of the bow of the Boston to show the Court how far the bow of the Boston on the 3rd of March was from the nearest corner of the Globe Milling Company dock.

A. Well, the bow now is 111 feet from the nearest corner of the Globe Milling dock, and it was moved astern 40 feet, therefore, it would be some 71 feet from the nearest corner of the Globe Milling dock at the time of this accident.

(Testimony of H. H. Hilton)

CROSS EXAMINATION.

Questions by Mr. Reed:

Mr. Hilton, do you remember when Mr. Gavin said she was dropped 75 feet down, at the investigation on the Boston?

A. I wasn't present.

Q. Weren't you? A. No, sir.

Q. Is your name H. H. Hilton?

A. Yes, sir.

Q. Well, you were present at the examination, weren't you?

A. I was there during my own testimony.

Q. Oh, you didn't hear Mr. Gavin?

A. Not that I remember of, no, sir.

Q. So if he said they dropped 75 feet down, that was a mistake, was it?

A. According to my estimates now, it might be.

Q. Do you remember the date she was dropped down? A. No, sir.

Q. Well, I will ask you whether or not it is on the 8th day of April? A. I couldn't say.

Q. Well, state when it was, as near as you can.

A. Well, it was along in April some time is all I know.

Q. It was shortly after this accident of the 3rd of March? A. Yes, sir.

Q. Was it at the order of the Harbormaster, Speirs? A. I have no idea.

Q. Were you on the boat at the time?

(Testimony of H. H. Hilton)

A. No, sir.

Q. Where is Mr. Gavin now?

A. He is in the courtroom, sir.

Q. I don't understand about the sponsons. Isn't the breach of that six inch gun enclosed in the semi-circular cage or turret, or something?

A. No, sir.

Q. Does it project right out of the flat side of the ship?

A. Yes, sir.

Q. Just through a port hole or shutters. There is nothing round there at all?

A. Only the carriage it rests on.

Q. What? A. Only the carriage it rests on.

Q. I know, but is that carriage in anything that is made for it, or is it up against the straight line of the ship—the side?

A. Oh, it is just stationary to the deck inside the shutters.

Q. I know, but is the deck where the gun projects a straight line, or has it a bulge, or curve on it?

A. No, sir, the side of the ship is in a perfectly straight line.

Q. That is what I wanted to get at. And that semi-circular thing I thought the gun went through, is about five feet forward of the gun?

A. That is the six pounder sponson you are talking about.

Q. No sponson for the six inch gun.

A. No sponson for the six inch gun.

Q. So that she projects then, that gun does, about

(Testimony of H. H. Hilton)

five feet or something or other, beyond the six pounder sponson? A. Yes, sir.

Q. And you say the beam is 42 feet? Does the beam include the sponson? That is the widest part of the beam, isn't it? A. Yes, sir.

Q. That isn't where the sponson is situated?

A. That is according to the specifications of the boat, when she was built.

Q. Does that include the guns as they project out?

A. No, sir, I didn't say so.

Q. I know that; but I was getting at that. Do the guns project in addition to the beam?

A. Yes, sir.

Q. Was the steam launch within the rail, or outside?

A. It was in its cradle on the whaleback of the boat.

Q. Is it within or without the rail?

A. The railing; there is no railing.

Q. I know, but the sides of the boat then.

A. It is within the side of the boat.

Q. It is within; that is clearly and entirely within?

A. Yes, sir.

REDIRECT EXAMINATION.

Questions by Mr. BECKWITH:

Did you take any photographs or pictures of the after dolphin, and the position of the Boston when she was first placed there in November?

(Testimony of H. H. Hilton)

A. Yes, sir, I took a series of six pictures for reference by the Naval Board.

Q. Are these the pictures you took at that time?

A. These are two of the pictures, yes.

Q. That is in November? A. Yes, sir.

Q. Do these show the position and situation of the Boston with reference to the sand dock?

A. Yes, sir.

Mr. BECKWITH: I offer these in evidence.

Mr. REED: Was this for March 3rd?

Mr. BECKWITH: Merely to show her position in November, I will show by Gavin later that the position was about the same.

Mr. REED: Is this for the position she was in March 3rd, the time of that accident?

Mr. BECKWITH: No, showing it in November. I will use these pictures to show the position was near the same as March 3rd. This is for the purpose of showing the position of the after dolphin and the barge.

Mr. REED: That sets me right, and I don't object to that. March 3rd is the time we are interested in.

COURT: You don't claim the boat was in the same position as these pictures at the time of the accident?

Mr. BECKWITH: No; showing the position of

(Testimony of A. B. McAlpin)

the after dolphin which fell down, and the barge which was in the port gangway there; the gangway from the sand dock.

Pictures marked "Libellant's Exhibits B and C."

Witness excused.

Mr. REED: Mr. McAlpin is here, and is in a great hurry; I would like to place him on out of order.

Mr. BECKWITH: I have no objection.

A. B. McALPIN

A witness called on behalf of the claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

Please state your residence and occupation?

A. Portland. I am a photographer.

Q. I will show you four photographs, and ask you if you can recognize them?

A. Yes, sir; those are four photographs taken by me on the 17th of March last.

Q. Were they taken by you personally?

A. Yes, sir.

Q. Are they true representations of the subject that the camera was aimed at? A. Yes, sir.

A. And you know what the steamer lying at the dock is at that time?

A. The steamer Yucatan, and the Boston lying below in the stream.

(Testimony of Harvey Beckwith)

Mr. REED: We offer them in evidence.

COURT: Taken after the accident?

Mr. REED: The 17th of March?

COURT: After the collision?

Mr. REED: Yes, the 17th of March.

Mr. BECKWITH: But before the Boston was moved?

A. Before the Boston was moved. The same boats and the same locality exactly.

Mr. BECKWITH: No objection.

Marked "Claimant's Exhibits 1, 2, 3, and 4".

Witness excused.

HARVEY BECKWITH

A witness called on behalf of the Libellant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. BECKWITH:

Mr. Beckwith, what position did you hold in the Oregon Naval Militia, from November 1, 1913, up to after March 3, 1914?

A. I was on the Naval Board.

Q. Were you chairman of the Board?

A. Chairman of the Board.

Q. State what you did, what arrangements you made, etc., relative to moving the Boston to her moorings near this sand dock.

A. I cannot give you the exact dates, but the Board considered the moving of the boat to a point that

(Testimony of Harvey Beckwith)

would be more advantageous to the militia, advantageous to the members, that had to visit the boat, from where she was than lying at the foot of Jefferson Street. The Board took the matter up with Drake O'Reilly, who owns the sand dock, and got his permission to anchor off the sand dock. The Board then went to the Harbor Commission, I think it is, in the Worcester Building, and got a drawing of the harbor line.

Q. Was it the Harbor Commission, or the Municipal Dock Commission?

A. I guess the Municipal Dock Commission, on the second floor of the Worcester Building. We then went to Major McIndoe, I believe that is his name, of the United States Engineers, and received his permission to drive a dolphin outside the harbor line; that is, towards the center of the river. We received permission to drive it, if necessary, nine feet outside. It was found that that was not absolutely necessary, and I think the dolphin is six feet from the line. The permission however, reads nine, but it was found it wasn't necessary to go that far out. The upper dolphin was driven just below the foot of Holladay Avenue, but on the harbor.

Q. Did you ever take this up with the harbor-master?

A. I was going to tell that. The harbormaster, Mr. Speirs, Mr. Larson and myself, I think Mr. Gavin was also present, visited this point before the vessel was moved and surveyed it; that is, merely

(Testimony of Harvey Beckwith)

looked over the situation, and whether it would be the proper place to locate the *Boston*. Afterwards contracts were made, and the dolphins were driven, and the *Boston* was moved by The Port of Portland—I think it was The Port of Portland, and anchored at her present mooring.

Q. Was any complaint ever made to the Naval Board regarding the position of the *Boston*?

A. No, not to my knowledge.

Q. Tell the Court what the *Boston* is used for by the State of Oregon, and the purpose of the Naval Militia, in a few words.

A. The *Boston* is loaned to the State of Oregon for the benefit of the Naval Militia, or the Naval Reserve. The vessel is in charge of six—I believe there is more now, but at that time, there was six United States Navalmen. There is also a local organization made up of some ex-United States navy officers, and men as volunteers, and it is used as their floating armory, and the training of these men in the various duties that are taught aboard naval vessels.

Q. Well, is it necessary to have the vessel in a position near the center of the city?

A. Yes. That is one reason that it was moved from Jefferson Street. It was too far out, and unhandy for these volunteers, who are all young men working in the city, and the idea was to get it as near the center of the city as possible. I want to correct one statement. The vessel was first moved from Jefferson Street to the foot of Stark Street on

(Testimony of Harvey Beckwith)

the east side, in order to be near the center of the city, but they had to move from there on account of the municipal dock buying the adjacent property, so they moved it down to the sand dock; and the reason we chose the present point was that the men could go aboard without crossing the railroad track by going across the sand dock.

CROSS EXAMINATION

Questions by Mr. REED:

Mr. Beckwith, did I hear you say that no complaint had been made about the location of the Boston? A. Yes, sir.

Q. Well, do you know whether any complaint has been made that you didn't hear of?

A. How is that?

Q. Were all complaints made to yourself?

A. If they were in writing or in any manner brought before the Board, I would hear of them.

Q. You mean to say the Board; you are speaking of the Board; complaints could have been made to the City authorities, and Government engineers couldn't they, without your knowing it?

A. Oh yes.

Q. What? A. Yes.

Q. I didn't hear.

A. Yes; I am not speaking for them.

Q. Might have been a hundred complaints you didn't know anything about all the time?

(Testimony of Harvey Beckwith)

A. Yes, I am speaking for the board.

Q. Beg pardon?

A. I am speaking for the Board; not for any one else.

Q. Do you know who Captain Hall is?

A. No, sir.

Q. Now, you say the Boston was moved so as to get in the center of town, and she really is in the center, isn't she? Isn't she in the narrowest part of the river? How wide is the river there?

A. I haven't any idea.

Q. Are you on the Naval Board?

A. Not now, no, sir.

Q. You were then? A. Yes, sir.

Q. Don't you know where you were putting the boat and her relative position with regard to the width of the river and the current? Didn't you pay any attention to that?

A. There was ample room. We didn't pay attention to it, because there was plenty of room for half a dozen.

Q. No attention paid to it? The attention given by the Board was so as to enable the boys to get across to the boat without crossing the railroad track?

A. That was one of the ideas, yes.

Q. And the other was to give them an easy access to the boat?

A. As easy as possible. I might say, Mr. Reed, that the matter of placing the Boston was also con-

(Testimony of Harvey Beckwith)

sidered as to her position between the two draws. That was also considered.

Q. Were you on the Board when she was moved on about the 1st of April? A. Yes, sir.

Q. What did you move her for? What was she moved for?

A. You mean from Stark Street down there?

Q. No, the first of April, this year?

A. No, no, no.

Q. You were on the Board then, weren't you?

A. No.

Q. Well, Mr. Beckwith asked you if you were on the Board from November 14th to April of this year, I thought. I maybe mistaken; I am a little deaf.

A. Well, I don't—I can't tell you off-hand when I resigned from the Board.

Q. I would like to know, Mr. Beckwith; just tell us when you got off the Board?

A. I don't know; I don't remember.

Q. About when was it?

A. I haven't any idea.

Q. Have you ever made a living on the water?

A. No, sir.

Q. Have you ever been connected with the water? Have you ever been at sea? A. A little.

Q. How much? A. Oh, a few trips.

Q. Have you ever had any experience in handling boats in the harbor? A. No, sir.

Q. And your connection with naval or sea mat-

(Testimony of E. J. Gavin)

ters, is it limited to your experience on the Naval Board? A. Yes, sir.

Witness excused.

E. J. GAVIN

A witness called on behalf of the Libellant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. BECKWITH:

Mr. Gavin, what is your rating in the United States Navy? A. Chief Gunner's mate.

Q. How long have you been in the United States Navy? A. 23 years.

Q. Were you assigned to, and on duty aboard the *Boston* from November, 1913, until after March 3, 1914? A. I was, sir.

Q. What did you do relative to measuring out the mooring position of the *Boston* prior to the time she was moved to this mooring?

A. Well, I sent men down there to take soundings, to find out the depth of the water in the place selected by the Naval Board.

Q. Were you down there at any time with the harbormaster?

A. Yes, the harbormaster went—we went down in his boat.

Q. Was the Naval Board with you?

A. The Naval Board was with us.

Q. Were any soundings taken at that time?

(Testimony of E. J. Gavin)

A. No, not at that time.

Q. You had the soundings prior to that?

A. Yes.

Q. Now, what part of the Boston is the widest part? A. Center line midships.

Q. At the time this accident happened, you were aboard the ship, were you not? A. I was.

Q. About what time of day did it happen?

A. About 12 o'clock, noon.

Q. Is the 3rd of March the correct date?

A. I couldn't say as to that. I have forgotten.

Q. Do you know whether it was during the month of March?

A. Yes, it was during the month.

Q. State the position of the bow of the Boston with reference to the nearest point of the Globe Milling dock, as near as you can estimate.

A. Well, from my memory, I should say it was about 70 feet.

Q. And the Boston was down the stream, then, 70 feet. Her bow was 70 feet down the stream from the nearest point of the Globe Milling dock?

A. Yes, sir.

Q. And what was the position of the stern, and the quarter deck of the Boston. Possibly you can use this blue print. This is the Globe Milling dock. This is the harbor line.

A. Well, that is about the way she lay, as far as I remember. (Indicating).

Q. This piling, now, was the after piling—Mr.

(Testimony of E. J. Gavin)

Hilton placed the after piling in there. How far is that after piling inside the harbor line?

A. About six feet, I think, we drove it.

Q. And how far towards the center of the stream --

COURT: Was that piling there at the time of this accident?

A. No, sir.

Q. The piling had fallen down prior to this accident?

A. Yes, sir.

Q. Now, where was the port gangway of the Boston? What part of her?

A. The port gangway is about just forward of the after quarter.

Q. Just forward of the after quarter. About in here?

A. Just dividing the ship into four parts.

Q. How far towards the center of the stream was the port side, the port quarter of the Boston from the harbor line, when the accident happened?

A. Port side of the Boston?

Q. That is inboard?

A. About 60 feet.

COURT: How far?

A. About 60 feet.

COURT: From the harbor line?

A. Yes.

COURT: You mean the boat was swinging out in the stream 60 feet.

Q. The harbor takes a turn here. It is an angle.

COURT: I understand that dotted line is the harbor line.

(Testimony of E. J. Gavin)

Mr. REED: That is what I want.

COURT: I understand the stern of the Boston was swinging out 60 feet in the channel at the time.

A. As to the channel, I wouldn't say, your Honor.

COURT: As to the harbor line.

A. Yes sir, this way here; in here. There was so little water, that we had to get out this far, in order to get 18 feet water.

COURT: From this line here to the port quarter of the Boston was about 60 feet. That is, it lay across the channel. A. No, sir.

Q. What was between the port gangway and the harbor line to keep the Boston off?

A. We had a float 20 feet wide

Q. 20 feet wide? A. For the gangway, yes.

Q. For the gangway. How close was that float?

A. The shore end of the float?

Q. How close was that to the harbor line? As a matter of fact, didn't it almost touch the harbor line?

A. At that distance, it almost touched it, yes, sir, this quarter, this end of the quarter here (indicating).

Q. This float was 20 feet wide, and did the other end of the float touch the port end of the Boston?

A. Yes, sir—no, it was two feet out.

Q. Two feet out? A. Yes, sir.

Q. What was the width of the port gangway?

A. About four feet, sir.

Q. So 26 feet of the port gangway would be out.

(Testimony of E. J. Gavin)

A. Yes, sir.

Q. Then the extreme stern of the Boston, say, would be 60 feet—where was the bow?

A. The bow was up against the dolphin. The bow would be even with the outermost piling of the Globe Milling dock; that is, the harbor line.

Q. You notice the Globe Milling dock makes an angle in there? A. Yes, sir.

Q. You mean this point here. A. Yes, sir.

Q. The bow was even with that piling in there?

A. Yes, sir.

Q. Was the stern of the Boston out in the stream—was it on the same angle as the Globe Milling dock, or was it further out in the stream than the Globe Milling dock?

A. From the best of my recollections, from the port quarter—or the starboard quarter, at least, standing on the starboard gangway, you could see right straight along the side of the ship, and up straight along the Globe Milling dock.

Q. Just about on the line, then, with the line of the Globe Milling dock?

A. Approximately.

Q. That would bring the Boston inside the position of the Yucatan, the vessel lying at the Globe Milling dock? A. Just about would.

Q. Do you know, approximately, how wide the river is at that point where the Boston was lying?

A. Approximately, between docks, I believe it is 600 feet.

Testimony of E. J. Gavin)

Q. Between docks? A. Yes, sir.

Q. What was your position on the Boston at the time this accident happened?

A. I was the man in charge of the regulars attached to the ship in the service, the naval service.

Q. A regular navy man? A. Yes, sir.

Q. How many regulars were on board the Boston? A. Six, sir.

Q. What were you doing at the time this accident happened?

A. Sitting down eating, sir.

Q. Where was the mess table?

A. The mess table was midships on the port side of the gun deck.

Q. On the port side?

A. Yes, sir.

Q. Just tell what happened? What you saw, and what happened when the accident happened?

A. Well, the first intimation I had of it was when something struck the ship and jarred her over, and everybody jumped up from the table, and we heard something crashing, and we didn't know what it was. We all started aft on the quarter deck. I realized that something was going on up on the forecastle, so I went up on the forecastle just in time to see the Yucatan swinging off, heading downstream from us. That was really all that I saw.

Q. What part of the Yucatan was touching the Boston at that time?

A. The starboard after quarter.

(Testimony of E. J. Gavin)

Q. Her starboard after quarter. Where was the point of contact with the Boston.

A. The first point of contact was at the—on the starboard side of the Boston, at the forward six pounder gun sponson.

Q. What was the next point of contact?

A. The next point of contact was the six inch gun, sir.

Q. What happened there?

A. The six inch gun was forced around through the ports that were closed to keep the rain and inclement weather off the steel work on the gun, and forced the gun through these two ports, jammed them in, and jammed the side of the ship in, and in so doing, stripped off the elevating gear of the gun, swung the gun up against the piano, jammed the piano up against the inner skin of the ship, which is only about one thirty-second of an inch thick, and jammed that in and broke the piano to pieces.

Q. What else was done there; what other damage?

A. Then the forward searchlight rail, which also includes the little rail around the sounding platform, was jammed in, and partly broken.

Q. That is located on top of the sponson, isn't it?

A. Yes, sir; and then a hook on one of the boom guys stripped off the canopy frame, and the canopy about two thirds of the distance on the steam launch,

(Testimony of E. J. Gavin)

which was sitting in its cradle on the starboard side amidships.

Q. The hook was on the Yucatan, was it?

A. Yes, sir.

Q. And the steam launch was on the Boston?

A. Yes, sir.

Q. Was any damage done on the port side of the Boston?

Mr. REED: It isn't pleaded, is it?

Mr. BECKWITH: Just the boom.

A. On the port side of the Boston, the ship jammed up against the dolphin, and being so jammed, she broke the port lower boom, which was laying in its cradle alongside the ship.

Q. Using these two boats as models, step over here and show the Court the position of the two vessels when you first saw them? (Witness arranges vessels).

Q. Is that about the correct position these two ships were in, when you first saw them?

A. About that.

Q. That is about the correct position, these two ships were in?

A. Yes, sir.

COURT: Were they touching when you saw them?

A. No, sir; they were just coming off from the collision.

Q. Did you notice anything that the Yucatan left on the Boston, parts of herself?

(Testimony of E. J. Gavin)

A. Yes, sir; she put in on the forward six pound sponson, she left some part of the wood work. I never found out what it was.

Q. Splinters?

A. Splinters hooked on to the hinges on the gun port.

Q. You were on the forecandle when you saw the Yucatan first. What did you do then?

A. I went aft to see what damage she was going to do there.

Q. When you went aft, did you go through the gun deck, or over the superstructure?

A. Through the gun deck, sir.

CROSS EXAMINATION

Questions by Mr. REED:

Mr. Gavin, what damage did she do aft on the Boston when you rushed through the gun room there to look?

A. No damage aft, sir.

Q. She was perfectly clear, wasn't she?

A. Yes, sir.

Q. And at the time you first saw her, by the arrangement of these models, her bow was off towards the west more or less?

A. Off towards the northwest.

Q. Yes, the northwest, and she at that time was under steam or drifting?

A. I couldn't say as to that, sir.

(Testimony of E. J. Gavin)

Q. The sponson is metal and projects over the boat. Was there paint on it? A. Yes, sir.

Q. From the Yucatan?

A. No, sir, not from the Yucatan.

Q. I mean splinters on there?

A. Splinters on there, wood.

Q. Was the sponson dented or bent?

A. No, sir.

Q. How thick is it?

A. Probably an inch thick there, sir.

Q. Well, a ship hitting it under any possible momentum would make some dent in it, wouldn't it?

A. Would if it had been steel against steel, or iron against steel.

Q. Not wood against wood?

A. Not wood against steel.

Q. Did the sponson scrape off any appreciable part of the Yucatan then?

A. I couldn't say as to that, sir. I never saw.

Q. Did you see the action of the six inch gun on the Yucatan when you rushed aft?

A. No, sir; we bounded off at that time, sir.

Q. Nor you didn't see the cargo boom do this work. On March 17, I believe the Boston was in the same position as it was on March 3rd, was it not—1914?

A. I don't remember when we did move.

Q. Didn't you say on your examination on the Boston that she was moved on the 8th of April?

(Testimony of E. J. Gavin)

A. If she was moved on the 8th of April, sir, she must have been there on the 17th of March.

Q. I will identify that then. I will ask you whether, on April 14th, at an investigation taken on the Boston, in the presence of Captain Blair, Commander, and other officers, you did not say, in answer to the question "Well, when did that change in the Boston occur? It took place how many days after the 3rd of March", you did not say "that occurred about three weeks ago—three weeks after? About three weeks after? Yes. It was only just last Friday. Last Friday it was done? Yes, today is the 14th, and last Friday would have been the eighth. No, it was done on the 3rd. Well, about the 8th of April. It was done somewhere around that? Yes." Does that identify the time any better when it was moved?

A. Yes, that is about the time—between the 3rd and 8th of April.

Q. It was done after the 17th of March?

A. Yes sir.

Q. So that on the 17th of March, the Boston was lying as she was on the 3rd of March?

A. Yes, sir.

Q. Mr. Gavin, I haven't understood—I am a little slow about those things, how far the stern of the Boston lay westward from the east harbor line of the Willamette River, on the 3rd of March, 1914?

A. The extreme stern would lay about sixty feet, sir.

(Testimony of E. J. Gavin)

Q. Is that port or starboard side?

A. Port side.

Q. Then the port side lay sixty feet in the harbor in addition to the beam of the ship there?

A. Yes, sir.

Q. And the gun projecting out besides?

A. The gun is forward, sir.

Q. The photographs will show how that was. Now, this cargo boom took away about two-thirds of the canopy. Now, how is that steam launch lying? Lying with her bow towards the bow of the Boston?

A. Yes.

Q. Was it the forward or after two-thirds it took off the steam launch? A. Forward.

Q. The forward? A. Yes.

Q. So at that time it must have been shooting off pretty well to the west, or else it would have taken all the canopy, wouldn't it?

A. At that time I should imagine, sir, she was pretty well straightened out.

Q. In other words, the boom hit the south end of the canopy and took out about two-thirds and left the rest intact. It didn't sweep it from end to end?

A. No, sir.

Q. Mr. Gavin, who is Captain Hall? Didn't he make some complaint to you about the location of the Boston?

A. He came to me to make complaint and I referred him to the Commanding Officer,—the Naval Board.

(Testimony of E. J. Gavin)

Q. To the Naval Board?

A. Commanding Officer of the Ship and the Naval Board.

Q. Do you know whether Mr. Beckwith was on the Naval Board at that time?

A. I couldn't say as to that.

Q. Who was Captain Hall?

A. I don't even know who he was.

Q. Was he a sea captain? A. Yes.

Q. Was he the only one?

A. He was the only one I ever knew that came aboard. One man came aboard.

Q. Did you ever have other complaints of her location?

A. No, sir, not that I remember.

Q. What was she dropped down for from where she was?

A. Was dropped down in accordance with instructions of the commanding officer of the Naval Militia and Naval Board, in order to facilitate the landing of people off ship.

Q. Had nothing to do with this accident?

A. No, not that I know of.

Q. How many feet was she dropped down? I don't want to confuse you. You said seventy. Mr. Hilton said forty.

A. That seventy in the first place was merely, I thought it was about that, but I have since found it was between forty and fifty.

Q. That is all right. She dropped down between

(Testimony of E. J. Gavin)

forty and fifty feet? A. Yes.

Q. To the north.

REDIRECT EXAMINATION

Questions by Mr. BECKWITH:

The stern of the Boston couldn't go any closer than it was on account of the depth of the water there? A. No, sir.

Q. What was done when the river would get deeper? Would she be moved in or allowed to stay in her same place?

A. It was the intention that when the river came up, we were to go in alongside the dolphin that had been placed six feet outside the harbor line; after the dolphin was put out, then we moved the float in there.

Q. What was the stage of the river at that time? Was there very much water?

A. No, sir; was low water.

Q. What was the reason for the Boston being out so far?

A. In order to gain enough water to lie without laying on the bottom.

Q. Was it inshore as close as you could bring her safely?

A. Yes, she had 19 feet of water; between 19 and 20 feet of water on the port side of the stern after, whereas the ship drew 18 aft.

(Testimony of E. J. Gavin)

RE CROSS EXAMINATION

Questions by Mr. REED:

What was the stage of the river at that time?

A. Low water.

Q. Dead low? A. Yes, sir.

Q. You swear it was dead low, do you?

A. As low as I ever saw it.

Q. That isn't what I mean. I mean on the Naval Board's recording gauge, how low was the river?

A. I couldn't say as to that.

Q. How do you know how much water there was?

A. I said low water, as far as I knew.

Q. I mean technically low water. Low water in the Willamette River. Do you mean zero?

A. I don't know about that.

Q. How do you know how much water—a naval man?

A. I said as low water as I seen in three years.

Q. How do you know how much aft?

A. Soundings; lead out.

Q. Then was it, say, to dead low water 17, 18½, where she was anchored? A. No, sir.

Q. It might have been, then, 15 feet above low water?

A. No, sir.

Q. Couldn't have been ten feet?

A. No, sir; because we took soundings every day.

(Testimony of E. J. Gavin)

Q. You swear it wasn't ten feet? A. Yes, sir.

Q. We are talking about the 3rd of March. I am not trying to trap you. A. Yes, sir.

Q. Talking about the 3rd of March. What would you move her in at all for, if she was all right where she was? If the water went up?

A. It was the intention of the Naval Board to move her in against the dolphin, in order to get holding.

Q. Why?

A. Because we had one line out astern, and it was run to the O'Reilly dock, and we didn't want to pull the piling out.

Q. Why did you have to hold the boat?

A. In order to keep her from going out in the stream further, when the west wind would blow.

Q. When the east wind would blow?

A. Yes.

Q. Going further out in the channel?

A. Yes.

Q. No danger from the current or logs, or anything—logs or drift?

A. We haven't any danger from that.

Q. None at all; what took out your dolphin?

A. The dolphin was taken out by our tugging on that with our ship itself.

Q. What made it tug on them?

A. Because the lines aft happened to be a little slack. There was rain, and the dry weather afterward dried the lines out.

(Testimony of E. J. Gavin)

Q. What made the boat tug the dolphin line?

A. Had a line upon us.

Q. Did you do it—the pressure? A. No, sir.

Q. What put the pressure on the boat that pulled out the dolphin?

A. The east wind.

Q. The east wind pulled her out? A. Yes, sir.

Q. And was there any current when she went out, when the dolphin went out?

A. Was about a knot and a half.

Q. But it was altogether the wind and the current?

A. It was all wind, as far as I know.

Q. And you were going to anchor inshore so as to get a better mooring ground, or whatever you call it?

A. Yes, we supposed the dolphin would be plenty strong enough to hold us in, and keep us up against that in order that we would yawl back and forth.

Q. You were mistaken, and pulled the dolphin out?

A. The ship pulled it out when the wind blew the ship out.

Q. You thought you would go closer to shore, to get a little more secure?

A. That is what we were after.

REDIRECT EXAMINATION

Q. You have been on the river for three years, have you?

(Testimony of E. J. Gavin)

A. Yes, sir.

Questions by Mr. EVANS:

Mr. Gavin, at the time the Yucatan was anchored it was made fast to the Globe Milling dock; did she have a line ashore from stern?

A. When she was made fast, yes.

Q. When she was tied up here? A. Yes.

Q. During this period of time. And do you know about how far the object was to which she was made fast on shore, from the Boston? I don't know what it was, whether it was a piling - - -

A. Well, I don't recollect, sir, just how far it would be.

Q. Could you give us an estimate of the length of the hawser she would have out astern there?

A. The length of the hawser would probably be 35 or 40 feet.

Q. Maybe we can get a better idea by reference to Claimant's Exhibit 2. Just to the left of that exhibit there is shown a small portion of a vessel. Is that the Yucatan? I believe it is admitted that is the Yucatan, isn't it?

Mr. REED; Yes, that is the Yucatan laying at the Globe dock.

Q. And the line going astern of that vessel ashore, it is made fast to what on shore?

A. Made fast to a cleat on the wharf.

Q. And that cleat is just about how far inside the Globe Milling Company's property, the fence line there?

(Testimony of C. R. Peckins)

A. Well, according to the picture—I couldn't say from there.

Q. You don't know from memory. You don't know how far that cleat is then from the Boston, do you?

A. From the Boston, no.

Witness excused.

C. R. PECKINS

A witness called on behalf of the Libellant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. BECKWITH:

Mr. Peckins, what is your occupation?

A. Structural engineer; civil engineer.

Q. Civil engineer. What position, or commission, do you hold in the Oregon Naval Militia?

A. At the present time?

Q. Yes. A. Ensign.

Q. What commission did you hold in the Naval Militia March 3rd, back to Novombe, 1913?

A. A chief boatswain's mate.

Q. What did you have to do relative to the movement or preparing the mooring place of the Boston in November?

A. I superintended the driving of the dolphin and piling, and built the gangway and steps.

Q. Where is this gangway and steps?

A. It is located in connection with the Drake O'Reilly docks, at the foot of Halsey Street. The

(Testimony of C. R. Peckins)

steps are built from the top of the dock down towards the westward, and the gangway is built from the northward going south.

Q. Those are the steps you refer to (showing photo)? A. Yes, sir.

Q. What is the position of that gangway that you built with reference to this dock? How does it run?

A. The gangway is inside the harbor line.

Q. Which way does it run? Is it on an angle with the dock or a line with it?

A. It is very near on a line with the dock. It is inside the harbor line. I can't say how far.

Q. Well, you mean inside—you mean towards the shore from the harbor line? A. Yes, sir.

Q. That would necessarily be outside the line?

A. Well, outside—I mean inside the harbor line, towards the shore, towards the track.

Q. Well, where were these pilings driven; the after piling first?

A. The after piling—the after dolphin, was driven about 90 feet from the corner of the Drake O'Reilly dock.

Q. Show the Court from this blue print where the after piling was driven?

A. It was driven, measured 90 feet from the corner of this Drake O'Reilly dock, southward, six feet outside the harbor line.

Q. Did you measure that yourself?

A. Yes, sir.

(Testimony of C. R. Peckins)

Q. Where was the forward dolphin driven?

A. Driven opposite the sewer at the foot of Holladay Avenue. 194 feet between the two dolphins.

Mr. REED: The dolphin wasn't there at the time of the accident.

Q. You were aboard the ship about the time the after dolphin came down, weren't you?

A. Yes, sir.

Q. What was done with reference to mooring the Boston when that after dolphin came down?

A. Why a spurshore was set between the beach and the side of the ship.

Q. What is a spurshore?

A. A spurshore is a long boom that one end is set on the beach and the other end is set on the side of the ship against what we call the chafing gear or pad to keep from chafing the side of the ship, and that is supported by chains holding from piling into the water, and the ship is held in close to that to keep it from swaying back and forth.

Q. How long was this piling that was used?

A. Never measured it.

Q. Do you know about how long it is?

A. I don't have any idea. I know the original length, but it was cut off.

Q. What was the original length? A. 90 feet.

Q. But it has been cut off?

A. Cut off quite a little.

Q. How did you make your measurement from these docks for these dolphins?

(Testimony of C. R. Peckins)

A. Well, I stretched a line from the southeast—southwest corner of the Drake O'Reilly dock—southwest corner of the Drake O'Reilly dock to the northwest corner of the railroad dock,—The line is called a piece of signal halyard, to make a straight line; took my measurement from that, called that the harbor line; although at the time I thought that it was the right harbor line, I was inside the harbor line. I was using the wrong corner of the dock. It is inside the harbor line by eighteen inches to two feet.

CROSS EXAMINATION

Questions by Mr. REED:

What does inside mean? Do you mean between the line?

A. I mean towards the shore; not out in the channel.

Q. You were too far in. You were trying to get out in the channel, and you made a mistake and got inside?

A. No, sir, I intended to keep inside.

Q. How did you make a mistake?

A. Because I was going to the wrong corner of the dock.

Q. Which way, when you say inside the harbor line?

A. I mean towards the railroad on the shore side; I don't mean out in the channel.

(Testimony of C. R. Peckins)

Q. You say, then, that you got it where you wanted to. You were trying to get inside, weren't you?

A. Yes, sir, were trying to keep inside and I did keep inside.

Q. So, you didn't make a mistake?

A. No, sir.

Q. I thought you said you made a mistake?

A. I made a mistake, but was right in making a mistake.

COURT: Didn't go outside the harbor line?

A. No, sir, had permission.

Q. You didn't make a mistake, if you were right. What do you call that boom you put on land?

A. The spurshore.

Q. How do you make fast on the land?

A. Not made fast on the land; just rests on the beach.

Q. In the water?

A. No, it rests on the rock, or something permanent behind it, to keep it from burrowing into the soil.

Q. The bank there is almost perpendicular, isn't it?

A. No, sir.

Q. Pretty near straight up and down?

A. No, sir, I have climbed that bank quite often.

Q. You can't climb it except with your hands and feet, can you?

A. Yes, sir, can climb it without touching my hands to the bank at all.

Q. That is where it is a beaten track, but you

(Testimony of C. R. Peckins)

have to be very careful where not a beaten track, don't you?

A. That bank is on an angle like that (indicating).

Q. How much is that—45 degrees, isn't it?

A. I couldn't tell.

Q. Didn't you have your hand over 45 degrees, then, as a matter of fact? A. 45 degrees?

Q. 45 degrees, yes. You are an engineer, aren't you? A. Yes, sir. I wouldn't swear to it.

Q. And one end of this boom was on the earth side, and the other was against the boat?

A. Yes, sir.

Q. And how high up on the bank do you carry the end of the boom? A. Water's edge.

Q. Then she was sometimes in the water, and sometimes out of the water, the end of the boom?

A. Yes, sir.

Q. Sometimes under water?

A. I wouldn't swear to that.

Q. Well, do swear. You just said.

A. I don't know.

Q. Then you don't know how far it was?

A. I know it was at the edge of the water at the time.

Q. At what time?

A. At the time I built that gangway.

Q. That was in November? A. Yes.

Testimony of Captain G. F. Blair)

REDIRECT EXAMINATION

Questions by Mr. BECKWITH:

You have served in the United States Navy, have you? A. Yes, sir.

Q. How long in the United States Navy?

A. Six years and eight months.

Q. What was your rating at the time you were discharged? A. Turret captain.

Q. When were you discharged?

A. March 13, 1908.

Witness excused.

CAPTAIN G. F. BLAIR

A witness called on behalf of the libellant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. BECKWITH:

What is your position in the Oregon Naval Militia?

A. I am secretary of the Naval Board, and also in charge of Naval Militia affairs, in the office of the Adjutant-General, and also commanding officer of the U. S. S. Boston.

Q. Did you hold that position on the 3rd of March, 1914? A. I did.

Q. Do you remember this accident, this collision?

A. I do.

Q. You have charge of the records of the Naval Militia? A. I do.

Testimony of Captain G. F. Blair)

Q. Have you a lease or any writing from the Navy Department of the United States, relative to the lease of the Boston to the State of Oregon?

A. I have the original contract between the secretary of the Navy and the Governor of Oregon, in regard to loaning the Boston to the State of Oregon.

Q. Let's see that (taking paper).

Whereupon proceedings herein adjourned until
2 P. M.

Portland, Ore. Wednesday,
October 28, 1914, 2 P. M.

CAPTAIN G. F. BLAIR

Resumes the stand.

DIRECT EXAMINATION continued.

Questions by Mr. BECKWITH:

Mr. BECKWITH: I offer this lease between the United States Government and the State of Oregon in evidence.

Mr. REED: No objection, but if the Court please, I think the lease makes it possible to protect the claimant, because it says that the state agrees to defend and protect, but I think the pleadings should be made to show, so that no question may be involved.

Mr. BECKWITH: Inasmuch as it is a public document, I ask leave to withdraw the original, and substitute a copy.

Marked "Libellant's Exhibit B-2".

(Testimony of Captain G. F. Blair)

Mr. BECKWITH: I call the Court's attention to one paragraph which is pleaded.

Mr. REED: I don't think any doubt about that.

Mr. BECKWITH (Reading): "The State of Oregon hereby agrees to keep said vessel in good order and proper repairs, as set forth in the next succeeding paragraph, and to abstain from making, or causing to be made, any alteration in the hull or machinery, or in any arrangements of the hull, machinery, spars, boats, or other equipment or apparel of the vessel, except such as may be authorized in writing by the Secretary of the Navy." So that he claims binds the state.

Mr. REED: I think Section 9 binds the state. I would like to have that read.

Mr. BECKWITH: You can read that.

Mr. REED: Would it be proper to read Section 9, into the record?

COURT: I understand copy of that is in evidence, so you can refer to that later.

Q. Have you the original lease between the Oregon & Washington Railroad & Navigation Company, and the State of Oregon?

A. I have (producing paper).

Mr. BECKWITH: I offer that in evidence.

Mr. BECKWITH: This is a copy. I will ask the same permission to withdraw the original. This is merely to show that we have the right to cross the right of way, and to use the anchorage in front of their property.

(Testimony of Captain G. F. Blair)

Mr. REED: I make the objection the Railroad Company can't give any rights in the matter whatever. I have no question about any controversy between the state - - -

COURT: This only shows a right of way across the property.

Mr. BECKWITH: That is all we claim.

Marked "Libellant's Exhibit C-2".

Q. Captain Blair, what experience have you had as an officer in the United States Navy?

A. I am a graduate of United States Naval Academy. I served two years at sea as midshipman, and two years at sea as ensign.

Q. Were you aboard the Boston the day of this accident?

A. I was; not at the time of the accident, but immediately afterward.

Q. How soon afterwards?

A. The accident happened at 12 o'clock noon, and I was aboard the ship by about half past one.

Q. Did you measure the current at that time?

A. I measured it at about two o'clock or a little thereafter.

Q. How did you measure it?

A. I took a heavy box, threw it overboard, even with the bow, and timed it with a stop watch from the time I threw it overboard until it passed the stern; took the interval of the passing of the box.

Q. What was the speed of the current?

A. It worked out 1.88 knots per hour.

(Testimony of Captain G. F. Blair)

Q. On this blue print, show the direction of the current, with reference to the Globe Milling Company dock on that day.

A. Well, the current sets in from the steel bridge; has a tendency to set in towards the shore in here; comes in this way, and then curves out afterward. The tendency is to set in towards the shore here.

Q. It sets in towards the Boston?

A. Yes, towards the Boston.

Q. Did you have any photographs taken the afternoon of March 3rd, regarding the Boston?

A. I did. I had a photographer come over and take photographs that day.

Q. Are these the photographs which were taken under your direction?

A. These are the photographs.

Mr. BECKWITH: I offer these in evidence.

Photographs marked "Libellant's Exhibits D, E, F, G, and H."

Q. You were commanding officer of the U. S. S. Boston, and of the Oregon Naval Militia that day, were you not? A. I was.

Q. Had any complaints ever been received by you relative to the position of the Boston, prior to the date of this accident?

A. There had been no complaints whatsoever.

Q. Are you familiar with the requirements and regulations of the United States Navy regarding the training of these broadside or midship guns?

A. I am.

(Testimony of Captain G. F. Blair)

Q. Similar to this six inch gun? A. I am.

Q. What do the regulations require?

A. The regulations are not in writing. The customs of the service are that every gun has a particular position, and it shall be kept in that position at all times except when training under orders. The battery is trained every day in the morning. At other times the gun remains in a certain position. The position is different on different ships. Do you want me to state what they are on board the Boston?

Q. What is the regulation regarding this six inch gun?

Mr. REED: He said there was no regulation; said it was a custom.

Q. What is the regulation concerning the training of this six inch gun which was damaged?

A. The six inch gun which was damaged, must be trained abeam at all times; that is the position it is required to take by the structure of the vessel, and by the customs of the service, in regard to the Boston.

Q. Could those gun shutters be closed, if the gun were in any other position than abeam.

A. For that particular six inch, they could not be.

Q. I hand you Libellant's Exhibit D; explain what that shows regarding the current and all.

A. That is a picture I had a photographer take from the fore part of the ship, showing the forecastle, the bow of the ship, the stem with reference to the

(Testimony of Captain G. F. Blair)

Globe Milling Company dock. It also shows the angle of the dock here, and the place where the Yucatan was lying.

COURT: The Yucatan was lying out here?

A. Yes, sir; was lying alongside this dock. Her stern was in here like this. She was headed up that way, and the weather condition show in this picture a slight drift over this way; you can see the effect on the water. That was taken to show the position of the bow relative to the Globe Milling Company dock, where the Yucatan was lying.

COURT: Taken at 2 o'clock in the afternoon?

A. Taken between two and four, yes, sir; in the afternoon; just as soon as we could get the man over there.

Q. The Boston is in the same position in that photograph, as she was when the accident happened?

A. Absolutely; she hadn't been moved at all, except the slight movement caused by the collision.

Q. I hand you Libellant's Exhibit E, and ask you to explain what that is.?

A. That is a picture taken from the forecastle to show the position where the Yucatan first struck the ship, the Boston. It shows the six inch sponson, with this circular part here, steel structure; shows the shutters that closed around the six pound gun; shows the splinter on the hinge where these gun shutters open and close, where the boat first struck; it also shows this stuck inside the outermost line of that sponson. The picture was taken in this way,

(Testimony of Captain G. F. Blair)

at an angle from the forecastle out towards the river. That six pound gun is trained exactly fore and aft.

COURT: Was it trained that way at the time of the accident.

A. Yes, it has to be. The shutters closed around it, and there is the exact position for it to have, and the splinters are shown there on the hinge of the shutter.

COURT: I understood you to say a moment ago that this is not the six inch gun.

A. There is six inch and s six pounder.

Q. Where was the six inch gun?

A. The six inch gun is aft, toward the stern. It is back behind the sponson; looking at this picture.

Q. I hand you Libellant's Exhibit F, and ask you to state what it is?

A. This picture was taken to show the condition of the steamer which is in the cradle, the place which is made for it specially, at the time when the ship is secured for sea; is as far inboard as it can be put, made for that purpose. It shows how the canopy and frame was taken off. That is looking from forward aft, looking from about the bridge toward the stern of the ship.

Q. What bridge is shown in that?

A. That shows the Broadway Bridge.

Q. I hand you Libellant's Exhibit G and H, and ask you to explain those.

A. Those two pictures were taken, showing the

(Testimony of Captain G. F. Blair)

gun, the six inch gun which had been damaged, with the shutters and also the piano.

Mr. EVANS: Which is which? They are both the same?

A. One shows the piano more particularly. G and H were both taken to show the gun and the piano, and their relative positions. And the damage which was caused to the port shutters. This six inch gun, its regular position is abeam; that is, right angles to the fore and aft line of the ship, and the shutters close down upon it. When the Yucatan struck the Boston first, and glanced off and hit the gun, it knocked the gun towards the stern, and made this gun turn around, made it train—what we call training backwards; when it did that, it came against this shutter which is tight around it, with such force that it forced the shutters open, and tore it, tore the leaf right out; also forced the gun, hit on an angle, it not only forced it aft, but also inboard. Taken right after, that same day. These two shutters ordinarily are tight together, just like that, and there is a hole in here, a semi-circle cut out, a semi-circle in each one. When they came down against it, it forced this shutter that way, and this one that way;—tore it, made a hole in the shutter. It also knocked the gun in; the whole gun itself, slides in this sleeve, fast in the carriage; so the whole gun comes inboard. It comes in six or eight inches. When it came in that way and went around, it caught this piano which was standing by the gun, but not close

(Testimony of Captain G. F. Blair)

enough to have been hit in any other way unless the gun came in; it caught the piano and forced it over against the side of the ship. This picture also shows the fact that the training gear, elevating gear, was trained. Here is the wheel like this, on this side of the gun. Here is also a shield, similar to this shield here, curving out, with this side of the gun, shows there being caught over the piano. There is a wheel down there, as shown. The force must have been very great to do it. The piano was sitting in there, and we train that gun every once in awhile; done every day, as a matter of fact; trained from forward back and amidships; and closed, is kept in that position all the time, and that gun can also move freely around there, around the piano without hitting it.

Q. Does it take much force to bring that gun back into battery, as you said?

A. It takes a great deal of force. They have recoil cylinders, filled with a special mixture in order to return it to battery.

CROSS EXAMINATION

Questions by Mr. REED:

Captain Blair, did you say there were regulations, that the gun should be pointed, as you call it, abeam, I believe?

A. I said there were no written regulations in the regulation book, but the customs of the service

(Testimony of Captain G. F. Blair)

are to keep them in a certain position, and the structure of each ship is specially designed for a particular position for every gun.

Q. Is that all done regardless of any possible damage to others? Is it an inexorable rule?

A. Yes, sir; it is never altered, without orders from the Secretary of the Navy, or the President of the United States.

Q. So that gun was left there because to change it would have broken an order of the Secretary of War or the President?

A. It wouldn't have broken an order, but is contrary to custom.

Q. I mean it would not be moved without an order from — — —

A. No, sir, not unless I had an order from the Governor or the Adjutant-Genetal, my immediate superior.

Q. Those guns were not changed after the third of March?

A. Ever since then—I don't know exactly what time we started to do it, but as a matter of convenience, we have trained, whenever the weather permits, have trained the guns aft and left in that position.

Q. Have you had permission from the Secretary of War or the President to do it?

A. I talked to the Adjutant General about it. I said unless I had an order from my immediate superior officer.

(Testimony of Captain G. F. Blair)

Q. So since this happened, you have done that, have you?

A. On occasions. I would like to state, also, on that, Mr. Reed, that the Assistant Secretary of the Navy passed through this city, and commented on the fact that some of our guns were not in the same positions as others, the same angle.

Mr. BECKWITH: Was that since the accident?

A. Since the accident.

Q. Did you tell him that a ship had run into them and hit them?

A. I made a report to the Department.

Q. No, but did you tell the Assistant Secretary that a ship had run into them and hit them?

A. I didn't see him at all.

Q. How do you know he said that?

A. I have a written letter from him. I have seen a written letter from him.

Q. Did anybody write him while he was here? What did he say about the ship running into that?

A. I don't know.

Q. Now, do the members of the Naval Militia ever indulge in target practice? A. Yes, sir.

Q. Do they shoot indiscriminately, without regard to any—pursuant to regulation or custom? Is everything done along the line—don't they ever take into consideration the advantages of position or conditions existing around them?

A. Always take into consideration when they are firing guns.

(Testimony of Captain G. F. Blair)

Q. But not when they are leaving them at rest?

A. No, sir.

Q. Captain, you referred to a photograph showing a six pounder, projecting fore and aft from the sponson of the ship, and you said the gun was there when this took place. The Yucatan didn't hit that gun, did it? A. No, sir.

Q. How could it have been way inside that sponson?

A. How could the gun have been inside the sponson?

Q. No, the point of contact?

A. The Yucatan—the part that hit the sponson was below the gun, below the six inch gun. You might have some overhang or underhang there, that would hit any part of the ship without necessarily hitting something above it.

Q. So there is rigging on the Yucatan, is there?

A. I don't know. I have never even seen the Yucatan.

Q. Never seen her?

A. That is, to take a real look at her.

Q. Please look at the photograph I will show, you, called "Claimant's Exhibit 3", the Yucatan being in the foreground, and answer whether or not she has rigging on her.

A. She has a very little rigging, yes, sir.

Q. Well, she has some rigging anyway.

A. She has some rigging. She hasn't a lot of standing rigging and booms.

(Testimony of Captain G. F. Blair)

Q. If anything hit below that six pounder pointing out there, a number of feet, the point of the six inch gun having hit the dead light, that six inch gun would have been in a position to have caught on the rigging, wouldn't it?

A. It depends on how you are out of the water.

Q. I am asking a question. You are an expert on design. How does that six pounder escape the rigging, if she scraped along back of the center of the sponson?

A. Because the six pounder is outside the line in which that ship hit our ship.

Q. Towards the west?

A. Yes, towards the shore.

Q. I thought you said the boat hit way inside the sponson.

A. No, I said hit inside the outer line of the sponson; tangent to that line which is parallel to the fore and aft line of the ship. Touched inside the tangent to that sponson which should be parallel to the fore and aft line of the ship. May I illustrate that for you?

A. I understand what a tangent is.

Mr REED: Now, if the Court please, I want to make a formal motion to strike out the evidence of this witness, regarding the customs of keeping those guns out that way, because I think it is immaterial.

COURT: Very well.

(Testimony of Captain G. F. Blair)

REDIRECT EXAMINATION

Questions by Mr. BECKWITH:

There are some questions I neglected to ask, Captain. What was the occasion and reason for the board of investigation which was held aboard the *Boston*, as alleged in the pleadings?

A. What was the reason for the Board of Investigation?

Q. Yes; how did that come to be held?

A. It was held according to Navy regulations.

Q. Written regulations?

A. Written regulations, and also because I telegraphed to the Department for instructions; being under State control, I wished to know also what the Secretary of the Navy desired, and I telegraphed for instructions and got written instructions from the Assistant Secretary of the Navy to go ahead and hold a Court of Investigation, in accordance with U. S. Regulations.

Q. What was the purpose of this Board of Investigation?

A. To find out what the cause of the collision was; whether or not the *Yucatan* was responsible for the collision, and an itemized cost of all repairs which would have to be made, in order to repair the damages done by the collision.

Q. Did this Board have authority to call witnesses?

A. It has authority to call witnesses, yes.

(Testimony of Captain G. F. Blair)

Q. What was the cost of that Board of Investigation to the State of Oregon?

Mr REED: I object to that because I don't know of any law—

COURT: Let him put it in.

A. The total cost was \$54.

Q. Now, what was done regarding the repairs to the Boston?

A. I asked for bids from several firms here in town that do such work, and received three different bids, as I remember, and accepted the lowest bid which covered the work we wanted done.

Q. Who was that?

A. It was placed with the Willamette Iron & Steel Works.

Q. What was the amount of that bid?

A. The amount of the bid was \$356.

Q. Of what did that bid consist? What was the bid for? State what the repairs were to be.

A. The repair items were, forward starboard six inch gun shutters; renewing two steel plates; renewing broken parts of brass strips furnishing new packing for same; vertical plate on after side of gun port to be faired; consisting of cutting out about twelve rivets, heating plates and bringing same back to original position; re-driving the rivets removed; repairing liner plates on side of hull, which consist of fairing same; renewing broken portions of half round iron beading; repairing pipe railing on forward starboard six pounder gun sponson, putting

(Testimony of Captain G. F. Blair)

same in original position; repairs to steam launch; renewing hard wood hatch combing on forward end; renewing pipe awning stanchions in original position, including brass connections for same; renewing forward half of canopy of No. 4 or 5 canvas; two corrugated iron floor plates in steam launch; splicing port boat boom with steel straps.

Q. What was the total cost? A. \$356.

Q. Have those repairs been contracted for?

A. They have been contracted for. They have been covered all by written proposals.

Q. Were they contracted for by the Government, or the State of Oregon?

A. By the State of Oregon, with authority of the Naval Board.

Mr. BECKWITH: Mr. Reed is willing to admit this price is a reasonable price.

RECROSS EXAMINATION

Questions by Mr. REED:

That covers all the damage done?

A. Yes, sir; that is all the damage, as far as I know. I fully believe that to cover all the damage.

Q. So there is nothing left after this is over?

A. I don't expect there can be a possible thing left.

Questions by Mr. Evans:

May I ask a question or two? I don't know where the county's position is. Captain, were you familiar

(Testimony of R. R. Vineyard)

with the manner in which the Yucatan was tied up to the Globe Milling dock prior to and at the time of the accident?

A. I have never inspected the lines the Yucatan had out. I knew she lay just forward of us, alongside of that dock, and she was in the habit of moving forward and aft occasionally when she was using her different hatches for loading.

Witness excused.

R. R. VINEYARD

A witness called on behalf of the Libellant being first duly sworn, testified as follows.

DIRECT EXAMINATION.

Questions by Mr. BECKWITH:

Were you an enlisted man, a member of the Oregon Naval Militia on March 3, 1914?

A. Yes, sir.

Q. What was your position at that time?

A. Ship's keeper at the time.

Q. What was your rating in the Naval Militia?

A. Master at Arms.

Q. Master at Arms is a sort of policeman on the ship? Where were you at the time of this accident?

A. On the forecastle of the Boston.

Q. On the forecastle of the Boston?

A. Yes, sir.

Q. Now, using these two models of ships here for illustration, come here and show what was done?

(Testimony of R. R. Vineyard)

A. (Arranging blocks) As near as I remember, the Yucatan lay in a position about like that. The Boston lay here. The relative distance between the bow of the Boston and the dock, I don't remember, but I imagine in the neighborhood of 90 or 100 feet.

Q. Where were you standing?

A. I was standing right here on the forecastle of the Boston; at the time she gave her first signal for the draw, I was at the mess table, and got up, and left the mess table, and went out on the forecastle, and watched the Yucatan pass. When I came out on the forecastle, the Yucatan was swinging on her stern line, and in a position about like that. Swung around slowly in such a manner.

Q. Show where that stern line was fastened on the Yucatan.

A. Well, the stern line was—this is not hardly the proportion here. I believe that this cleat that the Yucatan was fastened to was further up on the dock than where this shows it. Was fastened in this manner, and swung on her stern. She reached a position about here, if I remember correctly, when the captain sounded the second signal for the bridge. When she reached a position about like this, she sounded the danger signal. At the time of sounding the danger signal, I heard them give a signal, that is merely a jangle of bells, to the engine room. Now, I imagine to start his engines up with more speed. She reached this position, and started to go ahead with

(Testimony of R. R. Vineyard)

a sidewise motion. He had cast off about here, and came to the sidewise motion, raking two or three piles on the Globe Mill dock right in here, with the stern, but not to do any perceptible damage; proceeded on a motion something on this manner, catching us at a point about here on our bow, with his starboard side of the ship about amidships; throwing us against the dolphin on the other side of the ship, and we came back slowly, and he started to straighten out, at the same time raking the forward sponson on the starboard side of the Boston, and the stern hitting the six inch gun, just after of it, and then veering off in a manner of this sort.

Q. Did he hit the search light rail?

A. That I am not certain. He must have hit the searchlight rail, because it was damaged.

Q. Well did you see anything happen to the steam launch?

A. I couldn't see from where I was standing.

Q. Did you see his boom swinging any?

A. Yes.

Q. What did you see?

A. I saw at the time he hit our sponson, I heard something snap. A line I suppose, was steel cable, or his rigging snapped, and saw the boom dangling.

Q. What was on the end of the boom?

A. His cargo hook, I imagine.

Q. His cargo hook?

A. Or a block. I couldn't clearly say whether a cargo hook or a block.

(Testimony of R. R. Vineyard)

Q. Did you stay on the forecastle of the Boston all the time?

A. No, sir; as soon as he reached a position about like this, I mounted up on the superstructure.

Q. Then what did you do? What did you see there?

A. The boat had reached a position about like this, and was all clear of us by then.

Q. Did you see his cargo—or that hook swinging at all?

A. Swinging, yes, sir.

Q. Where was the hook at that time? In what position was the hook?

A. Hook?

Q. Yes.

A. It was swinging back and forth in the air; from the end of his cargo boom.

Q. Was the hook swinging anywhere near the canopy of the Boston's steam launch?

A. He was past the steam launch; I imagine about down to here by then.

Q. Was the boom on a foremast or a mainmast?

A. On his mainmast.

Q. About where did the six inch gun of the Boston strike the quarter of the Yucatan?

A. It is shown in the photograph. Well, I imagine about midships; I couldn't say clearly.

Q. Have you seen the scratches or marks on the Yucatan since then?

(Testimony of R. R. Vineyard)

A. Yes, I have noticed on several occasions, a long scratch along the side of the Yucatan?

Q. Show us, from Claimant's Exhibit 4, about where the six inch gun of the Boston struck it.

A. On this side of the ship.

COURT: Which side?

A. On the port side.

COURT: About midships?

A. About midships; would be about in here. Now there is a line running from here, on aft, sort of a crease on the Yucatan, which was left by the six inch gun.

Q. You saw the piano since this accident, did you?

A. Yes, sir.

Q. Would you say it was a complete loss?

A. Yes, sir.

Q. Where was the mate on the Yucatan?

A. Which one?

Q. The second mate?

A. Tending the stern line.

Q. The Yucatan made two signals to the bridge, and then gave the danger signal? A. Yes, sir.

Q. And she was turning all the time? A. Yes.

Q. About what angle was she from her dock when she blew for the bridge the first time?

A. The angle of about 30 degrees, I imagine.

Q. What angle was she when she blew the second signal for the bridge?

A. About 100 or 110 degrees; 120; somewhere in there. I cannot say exactly.

(Testimony of R. R. Vineyard)

Q. About what angle was she when the danger signal was sounded?

A. In the neighborhood of 150 or 160 degrees; possibly more; I couldn't say precisely.

CROSS EXAMINATION

Questions by Mr. REED:

Mr. Vineyard, did you see any cause for the danger signal? A. Beg pardon?

Q. What was the condition of the bridge when the danger signal was blown?

A. When the danger signal was blown, I couldn't see the bridge from where I was standing. I was still on the forecastle. I didn't see the bridge until after I had mounted up on the superstructure.

Q. How was the bridge then?

A. She was in a position about like that (indicating) just opening.

Q. Just beginning to open?

A. Just beginning to open. You could—there was a space in between the two lifts on either side; oh, it was in a position, I imagine, about like that (indicating).

Q. Can you use words to describe it, so the stenographer can get it? Could you jump across it?

A. No, I couldn't jump across it. I imagine was a distance between the two spans of about 15 feet.

Q. That view that you had of the bridge, as I

(Testimony of R. R. Vineyard)

understand it, was after the danger signal blew, and after you had gone to the superstructuer to see?

A. Yes, sir.

Questions by Mr. EVANS:

Now in describing the position of the Yucatan, when she was casting off, you illustrated that with the models here, and the line from the model of the dock. Do you understand that the stern line was extending at right angles to the beam of the ship over towards the dock, or was it reaching out astern?

A. It was reaching around the stern, I would say, to these chocks on the other side.

Q. Let me show you Claimant's Exhibit 2, which has been identified as showing the stern of the Yucatan, to the left of the picture, with the stern line, the hawser that runs across to the cleat.

A. You wish me to state where the line was at the time he was turning?

Q. Yes.

A. Instead of passing from this cleat—it don't show where made fast, I suppose on the dock. Instead of fastening on the cleat, as shown in the picture, it had to run to the chock on the other side of the ship; that is, to the stern of the ship; there is two chocks, one on each side.

Q. And was a chock on each side of the ship?

A. On the ship on this side over here, not visible in the *pictur*.

Q. That would be considering the photograph of the ship, starboard or port side?

(Testimony of R. R. Vineyard)

A. Starboard side.

Q. But it was extending from that chock, back towards the cleat on the dock, was it not?

A. Yes, sir.

Q. About what length of line?

A. I can't say exactly.

Q. Well, approximately, how much?

A. Why, I imagine he had from the chock to the cleat on the dock, he must have had 50 or 60 feet of line out; possibly more.

Q. 50 or 60 feet of line?

A. Possibly more.

Q. And as his vessel began to turn, do you know whether or not the winch was being operated to shorten this line?

A. Yes, sir.

Q. What effect would that have on the vessel? Would it pull it towards or away from the Boston?

A. Well, it would pull it forward and away from the Boston.

Q. Could you illustrate it here with a string?

A. The string made fast here. Of course, this tack you have here—the chock was really about in this position, making fast here. This line, instead of extending down, was extending in this manner.

Mr. REED: Please say the directions.

A. Around the stern of the ship and taking up on the winch, you draw it in, at the same time pulling it around.

Q. Yes, but let's begin at the first. When the

(Testimony of R. R. Vineyard)

captain gets ready to cast off here, he orders the line from the bow cast loose, does he not?

A. Yes, sir.

Q. Now, then, when you are just casting off that bow line, what position is the stern line? Is it extending sternmost or is it extended at right angles to the beam?

A. Extending stern.

Q. And when he gives the order to cast off forward, then your winch would begin to work the stern line, would it not?

A. The stern line prior to that; as a general rule, I believe there is two stern lines out, one from the chock of the starboard line, and one from port. The stern line from the starboard line, in this particular case had been moved forward in order to swing the ship; had to be in order to swing the ship on the stern.

Q. What I am getting at, would the effect on the vessel, when you begin to turn the ship here—I want to know whether or not the boat will be pulled in closer towards the Boston at any time during the operation beginning from the first up to the last?

A. No, sir.

Q. It would not? A. No, sir.

Q. It would just be held taut up to the cleat?

A. If anything, she would be pulled forward a little, be pulled forward on account of the line placed in the chock ahead.

Q. Wouldn't that depend on at what point she was attached to the dock? She was attached to

(Testimony of R. R. Vineyard)

the cleat, apparently, from this photograph. It was astern. A. Yes.

Q. Wouldn't the vessel naturally be pulled back towards that cleat for a perceptible distance?

A. I don't think a captain, or any seafaring man, would attempt to swing - - -

Mr. REED: I object to this. This is taken when the Yucatan was fast to the dock, and is different, and for that reason cannot be used.

Mr. EVANS: That is what I want to find out. I don't know.

A. If you attempted to try to swing from here, you would have to come back. That is, come back sufficiently to give you a purchase on that line to swing around.

Q. Whether that was done in this case or not, you don't know, do you?

A. I think it was, because he couldn't have swung, unless he did.

Q. Now, then, at the time the first signal was given, had he cast loose the stern line or not?

A. No, sir.

Q. At the time the second signal was given had he cast off? A. No, sir.

Q. At the time the danger signal was given had he cast off?

A. Well, now, I couldn't say exactly whether it was or not. It was a matter of about five or six seconds between the time the order came to cast off the stern line, and the danger signal, and I don't

(Testimony of R. R. Vineyard)

remember clearly whether before or after the danger signal.

Q. But you feel fairly sure that at the time he gave the second signal, he was approximately around about 120 degrees, on an angle, somewhere near that?

A. Yes, sir.

Q. You have been to sea with Captain Paulsen, haven't you?

A. As a passenger, yes, sir.

Questions by Mr. REED:

Mr. Vineyard. I want to ask you whether you were looking at the Yucatan when she blew her first signal for the bridge? Do you remember anything about the movement of the lines before the danger signal?

A. There was no movement of the lines before the danger signal, as far as I know, because when he sounded the first signal, I was still in the mess room.

Q. You were in the mess room, and couldn't see?

A. No, sir.

Q. You ran out when the danger signal blew?

A. No, sir; I went out; walked out, just after he sounded the first signal for the bridge.

Q. I want to ask you another thing. After you were looking at it, isn't it a fact that the line on which this boat was swung that was worked on a winch, was moved south on the dock at least 120 feet to another cleat or cavel up there?

A. I couldn't say.

Q. You don't know whether it did or didn't?

(Testimony of G. A. Hoffman)

A. No, sir.

Q. You weren't looking? A. No, sir.

Q. So you are not saying, are you, he was made fast to any cleat, and stayed in any cleat where the tack is put in that board?

A. I couldn't say, because I couldn't see the cleat.

Q. You are not saying he stayed fast to any cleat shown in any photograph? A. No, sir.

REDIRECT EXAMINATION

Questions by Mr. BECKWITH:

You are acquainted with the second mate?

A. Yes, sir.

Q. And so you were out on the forecastle to see him go by? A. Yes, sir.

Witness excused.

G. A. HOFFMAN

A witness called on behalf of the libellant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. BECKWITH:

What is your occupation, Mr. Hoffman?

A. Eiler's Music House.

Q. What position do you occupy with them?

A. In the sales department; have charge of the sales department.

Q. Are you familiar with the value, the prices

(Testimony of E. J. Gavin)

of the auto-pianos, similar to the one which was destroyed on the Boston? A. I am.

Q. What is the price, the sales price?

A. The retail price is \$750.

Q. Has a new piano been placed aboard the Boston to replace this old one?

A. I don't know.

Q. Did you see the one that came back from the Boston? A. No, sir.

Witness excused.

E. J. GAVIN

Recalled for further

DIRECT EXAMINATION

Questions by Mr. BECKWITH:

This morning we were talking about the distance of the port quarter of the Boston from the harbor line. Now, state what was the distance from the outermost part of the Boston, the hull of the Boston, from the harbor line.

A. At the greatest distance?

Q. Of the hull, yes.

A. That would be 66 feet from here.

COURT: Wasn't the Boston more than six feet wide?

A. That is all she is there, your Honor. And sixty on the otherside.

Q. The outermost point was the stern, then?

A. Yes, on account of the angle in here of the

(Testimony of E. J. Gavin)

harbor line, you see would bring us—this is a smaller angle here than here, and this is the greatest distance between the ship and the harbor line, which is sixty feet, and across the stern is only six feet; so really the furthest part out in the stream, would only be sixty six feet at that time.

COURT: What is the beam of the Boston?

A. The beam here, sir, is about 42 feet.

COURT: What is it there at the stern?

A. Six feet.

Q. But after you get beyond the bulge, beyond the curve?

A. This is not really the curve of the stern of the ship. It comes in closer than that. You see this is drawn nearer to scale, clear from here, nearly the same position clear to the stern. It isn't riding that way; when it comes here, starts gradually tapering in, has an overhanging stern, and really across right here is only six feet wide.

COURT: How far would it be 20 feet forward?

A. 20 feet up here?

COURT: Yes.

A. Would probably be in the neighborhood of 20 feet wide, and up here again would be 30 and so on up to midship line, which would be the widest part, would be about 42 feet, and then after she comes to here again, it starts tapering again.

(Testimony of Captain A. C. Paulsen)

CROSS EXAMINATION

Questions by Mr. REED:

That boat is sharp at both ends, isn't it?

A. No, sir; not particularly sharp. The bow, of course, is sharp, and then it goes down to the first quarter of the ship.

Q. I know, but almost so, isn't it?

A. Yes, sir.

Q. Looks that way to a landsman, anyway?

A. Very nearly; only six feet width across.

Witness excused.

LIBELLANT RESTS.

CAPTAIN A. C. PAULSEN

A witness called on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by Mr. REED:

Please state your occupation?

A. Master mariner.

Q. How long have you been a master mariner?

A. I got my first command in 1903.

Q. 1903? What ship was that on?

A. That was on the sailing ship.

Q. What?

A. A sailing ship to San Francisco.

Q. Where did she run?

(Testimony of Captain A. C. Paulsen)

A. She ran between San Francisco and Puget Sound.

Q. What other boats have you had command of?

A. Why, another sailing ship, a larger ship we called the Reaper.

Q. What tonnage did she have? A. 1500.

Q. What other boat?

A. The George W. Elder.

Q. How long were you on the Elder?

A. I was on the Elder nine months.

Q. Where did you run? Where was the Elder's run?

A. Between coastwise, Portland and San Diego.

Q. And San Francisco?

A. San Francisco and San Pedro.

Q. San Pedro. Before 1903—did you say 1903?

A. Yes.

Q. How long have you been at sea?

A. Nine years.

Q. How old are you, Captain? A. 35 years.

Q. As I understand your figures, then, you have been in charge as master mariner for 11 years, and you were at sea nine years before that?

A. Yes, sir.

Q. That is 20 years? A. About 20 years.

Q. Do you hold a license? A. Yes, sir.

Q. From the Government for the handling of ships? A. Yes, sir.

Q. Well, at the present, what is your occupation?

A. Beg pardon?

(Testimony of Captain A. C. Paulsen)

Q. What ship are you in charge of now?

A. Steamer Yucatan.

Q. The ship we are talking about?

A. Yes, sir.

Q. You hold a license as captain, master?

A. Yes, sir.

Q. State what local harbor licenses as pilot you hold?

A. Well, I hold a local license for the Portland harbor.

Q. What else?

A. Columbia River Bar, as far as Astoria, San Francisco, San Pedro, San Diego and a master license, unlimited master's license for steam and sailing vessels.

Q. Now, on March 3rd, you had no local license for the harbor of Portland. A. No, sir.

Q. But, at that time, did you have a license for these other places? A. Yes, sir.

Q. All of them? A. All of them.

Q. How long after the 3rd of March did you apply for your local license—about?

A. About two weeks.

Q. Do you remember what date it was?

A. No, I don't. It is on the license.

Q. The Boiler Inspectors fined you, I believe, for not having a license?

A. No, the Collector of Customs fined me.

Q. Well, did they issue your license before or after that time had expired? A. Afterward.

Q. After, as soon as it was expired?

(Testimony of Captain A. C. Paulsen)

A. Yes, sir.

Q. Now, then, in moving vessels in the Portland harbor, I believe the regulations call for a local pilot?

A. Yes, sir.

Q. And when you call for a local pilot, is there any charge for it, for the pilot that goes with ships that move around the harbor?

A. Not for our ships; not for ships that run here regularly.

Q. How long had you been master of the Yucatan previous to the 3rd of March?

A. About eight months.

Q. About eight months; and just previous to that on the Elder?

A. Yes, sir.

Q. And they are both owned by the same company, I believe?

A. Yes, sir.

Q. And which is the biggest boat?

A. The Yucatan.

Q. What is her tonnage?

A. 3500 gross tons.

Q. Well, during that eight months, had you called frequently at the Globe dock?

A. Yes very frequently.

Q. Had you ever used any method of handling the boat at the dock, except that described by Mr. Vineyard?

A. Not getting away under our own steam, we always got away that way.

Q. Sometimes, are you there without your own steam?

(Testimony of Captain A. C. Paulsen)

A. Once in a great while we have a tow boat.

Q. How do you work it when you haven't steam?
Have a tow boat?

A. When we have no steam, yes, we have a tow-boat.

Q. Have a tow boat? A. Yes.

Q. Yes, but when you have steam, do you always go under your own power? A. Yes.

Q. Now, Captain, state what line it was that was used by you on the 3rd of March at this time, what lines were cast off, and what lines were used?

A. Why, getting under way you mean?

A. Yes, when you left the Globe dock.

Q. Well, about five minutes before we got ready to leave the dock, we run out what we call a stern spring.

Q. You put it out?

A. We run out what we call a stern spring from the offshore side, on the ship, the after chock, run around the stern, and run it up half ways on the dock and heave it tight. After that is run, we let go everything, head line and stern lines and start very slow astern, in order to help the stern in towards the dock, to get the head to swing off, and we keep this line tight all the time to help the stern go up along the dock and get head on. That is the only line we had out swinging.

Q. About where is that cleat or cavel on the dock? How far towards the steel bridge from the usual place?

(Testimony of Captain A. C. Paulsen)

A. I don't know how long the dock is, but I should judge about 150 feet up the dock.

Q. How long is the Yucatan? A. 336 feet.

Q. You can guess then about where you took it up?

A. About where.

Q. Well, state what occurred now, Captain, at this time, in regard to the whistles and the bridge, and the whole story.

A. When I got ready to leave the dock, we had our lines run, and I gave the signal for the bridge to open; let go all lines.

Mr. EVANS: Would the Court be willing to go down with the stenographer while the Captain is giving his testimony on board the ship, and let him describe on the premises there just what was there at that time, or do you feel you can get a clear enough understanding. We will be glad to furnish the conveyances, if the Court feels it is worth the time.

COURT: I will leave that to counsel. Mr. Reed says he is very anxious to get through with this witness before six o'clock.

Mr. REED: I will be very glad to have that done, but the Court can look at the boat at any time.

COURT: He can show from here.

WITNESS: I can illustrate from the model (arranging blocks). That is the position the ship would be in when tied up to the dock; laying alongside of the dock, we have a line out from this quarter in here.

COURT: A stern line.

A. And another short line from here and in here,—

(Testimony of Captain A. C. Paulsen)

either way we can get hold of the dock—what we call our stern lines. Ahead here, we have a line from here, leading down this way, another line leading up this way, our head line. When we get ready to leave, we run our stern spring from our offshore quarter.

COURT: That is on the starboard side of the boat.

A. That is on the starboard side of the boat, sir, up as far on the dock as we can, just about midships, I should judge about 150 feet, and heave this well tight on the capstan, steam capstan on the deck.

Mr. EVANS: Explain that to the Court.

A. After it comes over or comes aboard the steam capstan, and it is held tight, and when that is held tight, we let go everything, stern lines and head line all together, and go very slow on the engines, and that brings the stern in towards the dock, say, about this way, and at the same time we heave on our stern spring. That will bring the stern up this way—up this way. We let go all our lines except that spring, and when the ship was about this far, I blew the first time for the bridge.

Q. How far out was that?

A. About 20 degrees, something like that. The bridge didn't open that time. I didn't pay much attention to it. I thought it would open when it got ready; and we kept on going at the same or swinging turn, until the ship was about 80 or 90 degrees,

(Testimony of Captain A. C. Paulsen)

and I blew the second time for the bridge, the ship still swinging with the current and the wind, and still heaving on this line. When she came down this way, so we couldn't use our line any more, and just about here would be a proper time to let go, about 120 degrees, 110 or 120 degrees, which would have been the proper time to let go, but the bridge wasn't open, when I blew the danger signal, and a very short time after I blew the danger signal, the bridge commenced to open, and I gave a bell for full ahead, full speed ahead, the current setting down this way, and the wind setting down this way both kind of got the ship out in a position like this, and before we could get sufficient headway on her to clear her, we went ahead full speed on port helm, as we call it, in order to swing the stern out to clear the Boston here. The gun scraped for about 30 feet or 25 feet on the Yucatan's side, as she swung out there, with the helm aport. And coming this way, our after boom that he spoke about, we have a guy; here is our boom; this boom being on the offshore side—that would be the offshore side—is never over the side of the vessel—is never over the vessel's side. Swinging here we had a guy on her midships, and another guy extending out here, made fast to an eye bolt here, right at the ship's line, extending out three or four inches, something like that, swinging around this way, and going ahead, the corner gun caught in this guy on the outside part of the guy, rather this inside guy, and caused the boom to swing out,

(Testimony of Captain A. C. Paulsen)

and the hook caught in the canopy of the steam launch.

Q. Captain, I will show you Claimant's Exhibit 4 and ask you which cargo boom it was on there that did that? Identify it.

A. This after one.

Q. The most aft of all?

A. The most aft of all here.

Mr REED: I want to offer in evidence the monthly meteorological report of Mr. Beall's. Mr. Beall is out of town. This shows the direction of the wind and the height of the river that day. Here is the wind northwest.

Marked "Claimant's Exhibit 5."

Mr REED: I offer it in evidence to show the stage of the water. It shows ten feet above zero—and the general direction of the wind during the month.

Q. Now, Captain which way was the wind on the 3rd of March?

A. About southeast.

Q. Was there any wind that day?

A. Oh, about 15 miles.

Q. What happened to the Yucatan from the contact with the gun?

A. Why, we tore two plates and bent two frames, tore out four dead eyes, and dented two more.

Q. Do you know what the approximate cost of reaping it will be?

(Testimony of Captain A. C. Paulsen)

A. Well, I had a bid from the Iron Works in Portland here. They estimated it would cost \$3200.

Q. \$3200.00? A. Yes.

Q. When did you do that?

A. A short time ago.

Q. When? A. Yesterday.

Q. Did the men go up there and look at the boat?

A. Yes, sir.

Q. From the Willamette Iron Works?

A. Portland Iron Works.

Q. Portland Iron Works. Well, there were three plates. Were there three or four plates taken out, cracked?

A. Two plates were cracked, and two plates were dented.

Q. Now, Captain, I want to get right on this. As I explained to the Court, I don't know much about that damage business. I thought we figured it \$1200. Did he come up and investigate this? Who was it did it?

A. I sent for him to come down and give me an estimate of the cost of it.

Q. Do you know his name?

A. No, I don't know his name. I have a letter here to show.

Q. Well, I may have to amend our libel in that matter a little later.

A. I have another estimate from San Francisco, and I sent a wire down to telegraph me the particulars and - - -

(Testimony of Captain A. C. Paulsen)

Q. I don't know that they want you to tell what your boss said.

Mr. EVANS: It seems to me all this testimony about what somebody told him it would cost to rebuild this ship over again is incompetent. If these men were here to testify, of course it might have some value, but statements of this kind don't seem to me to be of much value.

CROSS EXAMINATION

Questions by Mr. EVANS:

Has the vessel been repaired?

A. No, sir.

Q. You haven't spent anything on it?

A. No, sir.

Q. Didn't consider the damage was sufficiently serious to warrant it?

A. It was repaired temporarily.

Q. What has been your custom, if you have a custom, in casting off when you are headed upstream? above any of these bridges through which you want to pass? Do you whistle before you start your engines going?

A. Yes, sir; the harbor regulations call for that.

Q. What is the whistle for the Broadway Bridge?

A. One long whistle, or blast of the whistle about six seconds, and a short whistle and a long whistle.

Q. That is, one, one, one? A. Yes, sir.

Q. A long and a short and a long?

(Testimony of Captain A. C. Paulsen)

A. Yes, sir.

Q. Could that be mistaken for any other signal a vessel would be giving in port? A. No, sir.

Q. Has it ever happened that the bridges would not respond to the first signal? A. Very often.

Q. Very often? A. Yes, sir.

Q. And when you gave the second whistle, you were still, as I understand it, fastened with the spring line. A. Yes, sir.

Q. To the dock. And at the time you gave the danger signal, you still were?

A. Still had a line on the dock.

Q. Still on the dock? A. Yes, sir.

Q. The object of giving the danger signal was what?

A. Why, to notify the people on the bridge that - -

Q. You were whistling for that bridge?

A. Yes, that we had to give it right away.

Q. What would have happened had you held taut your sternline without scating off?

A. We would have swung in alongside the Boston; that is what I figured on at the time. If a merchant ship had been laying there at the dock, I would have hung onto my stern line, and swung right up against them, but the Boston had guns protruding out there at right angles from the ship's side, and I was kind of afraid of them; but in any case that was the only thing to do, to hang onto the stern line.

Q. And that is what you did do until you got

(Testimony of Captain A. C. Paulsen)

to where you thought you were in danger of colliding with the Boston?

A. I still hung onto the stern line until I saw the bridge commence to open, and I could see I had a chance to go full ahead with the ship, and get away from the Boston on a port helm, as I explained.

Q. So you then started for the opening?

A. For the draw, yes.

Q. But you found you hadn't enough headway to carry you out in the stream and through the draw?

A. Yes, we had enough headway; had enough headway to carry us through the draw. We got through the draw all right. The only thing we scraped the ship's side with that particular gun on the Boston.

Q. By that time you had swung around until you scraped the gun?

A. We hadn't swung around, but the quarter was just scraping; in order to have the quarter scraping—suppose the Boston was in this position (illustrating) The ship must be like this; otherwise I couldn't go ahead on port helm.

Q. Do you know whether you had begun to scrape before or after you cast off your spring line?

A. The ship couldn't scrape before after I cast off because the ship was held up by the spring line.

Q. Before you cast off? A. Yes, sir.

Q. And then you cast off, I take it, when the vessel rebounded from the concussion?

(Testimony of Captain A. C. Paulsen)

A. No. I told you we had cast off. After the vessel had struck the Boston, you mean to say?

Q. Yes.

A. No, sir, I didn't tell you so.

Q. (Read) Do you know whether you had begun to scrape before or after you cast off your spring line? A. (Read) Well, the ship couldn't scrape before after I cast off, because the ship was held up by the spring line.

Q. Well, wasn't the vessel long enough to reach from the cleat, or whatever you were fastened to by the spring line to the Boston? A. Yes, sir.

Q. So it could have done that, couldn't it?

A. Not unless the ship swung around right angles with the Boston. At the angle we were laying it could never happen.

Q. You mean at right angles to the gun?

A. No, I mean at right angles to the Boston. The gun was sticking out at right angles from the Boston's side, and in order to touch the Boston at all, with the stern line fast, we had to swing in the same position as the Boston.

Q. And that is what you would have done, had it been a merchant vessel, rather than cast off your stern line, unless the draw had been open sufficiently for you to go through?

A. No, if a merchant ship had laid in place of the Boston there, nothing would have happened; clear sides like the side of my own ship; not a thing to touch.

(Testimony of Captain A. C. Paulsen)

Q. The point is, if you hadn't seen the draw open, you would have kept close with the stern line and swung inside by the other vessel, and nothing would have happened except the little 'bump'?

A. Come together.

Q. At what angle were you when you cast off your spring line, Captain Paulsen, as near as you recollect?

A. About 120 degrees. 90 degrees would be pointing right across the river.

Q. Would be right angles - - -

A. And just about 30 degrees more.

Q. And how soon after that was it that you struck the Boston, after you cast off?

A. Well, it must have been a matter of seconds.

Q. A matter of seconds? A. Yes.

Q. A very short time?

A. A very short time; I couldn't say very much about the time there, because I was pretty busy looking after the ship.

CROSS EXAMINATION

Questions by Mr. MAURY:

Captain Paulsen, did you say that after you cast off your head line, you waited about five minutes before you started to turn the boat around?

A. No.

Q. What did you say about five minutes?

A. I didn't say anything about five minutes.

(Testimony of Captain A. C. Paulsen)

I was telling you just about five minutes before we got ready to depart from the dock.

Q. Then you cast off the head lines?

A. No, no, before we touched any line at all, we run out our stern spring.

Q. You run out your spring?

A. Yes, we always do that with a vessel made fast to the dock with stern lines and head lines.

Q. How soon did you cast off before you actually started to turn?

A. I blow the whistle first for the bridge; then we let go our lines, and the ship started in to swing.

Q. That was what I was trying to bring out. You did blow a whistle? A. Yes.

Q. Before you ever started to turn at all, didn't you?

A. Yes, sir; of course, comes out from the dock a little bit before get any headway in turning at all.

Q. Didn't you blow one whistle before you ever started to turn at all? Didn't you blow one whistle for the Broadway Bridge?

A. Before we ever let go the lines?

Q. Before you ever started to turn at all, didn't you blow one signal for the Broadway Bridge?

A. No, the first whistle I blew for the Broadway Bridge was about 20 degrees off the dock.

Q. Do you remember testifying down on the steamship Boston at the time of the investigation?

A. Do I remember testifying then?

Q. You testified then? A. Yes, sir.

(Testimony of Captain A. C. Paulsen)

Q. In the presence of Captain Blair and Mr. Beckwith? A. Yes, sir.

Q. Didn't you testify down there like this, in effect? We left the Globe Milling Company's dock at 12 o'clock noon, the 3rd of March, 1914. I blew for the Broadway Bridge to open? A. Yes, sir.

Q. "At 12 o'clock, the same time, we let go the head lines in order to swing the ship around, hanging onto our stern line; Later, the ship being about 20 degrees off the dock, I blew the second whistle for the bridge to open, but no attention was paid from the bridge". Now, that is what you testified down there, wasn't it? That the whistle you gave, when you were 20 degrees off the dock, was the second whistle?

A. The only whistle 20 degrees off the dock - - -

Q. Just answer the question, Captain Paulsen. What do you think about that? Was that testimony correct? Did you give that testimony there?

A. I gave the testimony; that is, if it is on the paper, it must be the way; I don't recall.

Q. That the whistle you gave the second time, the second signal you gave for the Broadway Bridge was given when you were about 20 degrees off the dock?

A. That is the first whistle.

Q. I just want to know whether you testified at the hearing in this particular way? Now, answer this yes or no, please. Just this one question: "Later the ship being about 20 degrees off the dock, I blew

(Testimony of Captain A. C. Paulsen)

the second whistle for the bridge to open." Now, did you testify that way or not?

A. Oh, I testified, I suppose.

Q. You testified to that?

A. Yes, but that is the wrong idea altogether.

Q. You mean to say now it is wrong?

A. I believe it is, because the ship being 20 degrees off the dock, it is just hardly clear of the dock, you see.

Q. You remember testifying to that, do you?

A. Yes, I remember testifying.

Q. But you were wrong then, and right now?

A. Well, if I said that way, you know; I couldn't say that.

Mr. MAURY: Now, if the Court please, the question I read was in substance and effect. I would like to get this into the record, the questions and answers: "Q. Just what time did your clock say that you blew for the Broadway Bridge? A. Twelve o'clock we let go of the head lines, in order to swing the ship around, hanging on to our stern line. Q. Then tell what happened? A. The ship being about 20 degrees off the dock, I blew the second whistle for the bridge to open, but no attention was paid from the bridge." Now, did you give that testimony?

A. I did.

Questions by Mr. BECKWITH:

How many times did you take the Yucatan away from that dock prior to this accident?

(Testimony of Captain A. C. Paulsen)

A. How many times?

Q. That is, about how many times, yes.

A. I couldn't answer that off-hand.

Q. Five or six times?

A. About that, I guess.

Q. Did you ever have trouble with the bridge opening? Was it slow to open before?

A. Yes, we had trouble more or less often.

Q. That bridge was always having trouble?

A. Always opened, though. We never had any trouble like this particular time.

Q. Was it ever slow in opening?

A. Not particularly slow, but it could have been attended to more promptly.

Q. What trouble did you have? Just tell what trouble you had with the bridge?

Mr. EVANS: Does that refer to this particular time?

A. At this particular time?

Q. No, prior to this.

A. I have nothing to say about that.

Q. You say, prior to this accident, you had been around there, you had taken the Yucatan away from this Globe dock five or six times? A. Yes, sir.

Q. And you said the bridge was slow in opening?

A. Yes, sir.

Q. You had some trouble that way?

A. Never had any trouble with her.

Q. Had always been a little slow, hadn't it?

(Testimony of Captain A. C. Paulsen)

A. I couldn't testify to anything of that kind, you know, except in this particular case.

Q. But after this, you know, a few times after that accident happened, you always used the tow boat, didn't you?

A. No, once in a great while, when we are working the engines, we use a tow boat. I don't believe we had a tow boat in this harbor more than three or four times.

Q. But when the current is as strong as that, setting into the dock, didn't you use a tow boat even if you had your own steam? A. When?

Q. The next trip after that, for instance.

A. I don't know whether we used a tow boat or not. I know we went up there once, I believe, with a tow boat.

Q. Now, this hearing that you had down at the Custom House. You received written notice of that, didn't you, of the findings? A. Yes.

Q. And do you remember that the letter said from the evidence adduced at your trial on the charge of negligence, filed against you on this April 11, 1914, the charge has been sustained? A. Yes.

Q. That was the substance of the letter you got?

A. Yes.

Q. You had no pilot's license in the Willamette River at that time?

A. No Pilot's license in the Portland harbor, not the Willamette River.

Q. You knew that the law required a pilot?

(Testimony of Captain A. C. Paulsen)

A. Yes.

Q. In moving your ship from dock to dock?

A. Yes.

Q. What was the charge? The pilot's charge?

A. No charge whatever.

Q. Didn't they charge you \$7.50 for moving the ship? A. No, sir.

Q. Now, you had trouble before this accident with the Yucatan? Do you remember an instance down in San Pedro Harbor? A. When?

Q. On January 28, 1914? A. San Pedro?

Q. San Pedro? A. No, sir.

Q. San Diego Harbor? A. Yes, sir.

Q. What happened there?

A. Why, we grounded the ship in San Diego Harbor.

Q. You ran her aground?

A. Was only 20 minutes or so; early in the morning; foggy weather.

Q. And the inspectors, the Custom House people there, had a charge against you, found a charge of negligence, didn't they?

A. No, didn't file anything. I filed my report, you know, like we always do, in detail, told them what happened, everything of the kind, how long the ship was on the mud, about 20 minutes. We backed off again, and no one knew anything about it. We had a trial, because they thought we should have stayed in outside until later on in the day.

(Testimony of Captain A. C. Paulsen)

Q. That happened January 28, 1914, in San Diego Harbor? A. About that time.

Q. What was the result of that trial?

A. I got suspended for 60 days.

Q. Suspended for 60 days? A. Yes.

Q. So in fact your license was suspended for 60 days from the period—from and after June 16, 1914?

A. Something like that; I know it went along six months before we had a trial about that case.

Q. The accident happened before this collision?

A. Yes, sir.

Q. And your trial, your findings and trial was afterwards?

A. That was a considerable time afterwards, about five or six months afterward, I guess.

Q. About how far up the dock was the stern of the Yucatan, when you let go of your line, your stern line? A. How far up the dock?

Q. Yes. That is, from the north corner of the dock.

A. From the north corner of the dock?

Q. Yes, was it 100 feet? A. No.

Q. You said that you hooked on to this cleat 150 feet up? A. Yes.

Q. Was it clear up to that cleat?

A. The stern?

Q. Yes.

A. I told you I carried that line up amidships about 150 feet up the dock.

(Testimony of Captain A. C. Paulsen)

Q. That is, you mean from the north corner of the dock 150 feet south

A. Yes, about that.

Q. Now, when you hauled her around, you had your starboard quarter to the dock?

A. No. We had our port quarter to the dock hauling around.

Q. I mean when clear around.

A. When clear around, starboard quarter to the dock.

Q. How far from that 150 foot point was the extreme stern of the Yucatan when you let go? Was it pretty near to that cleat?

A. As far as I recall, it must have been—well, we used to let off up about 20 feet from the cleat, north of the cleat.

Q. Didn't the current have a tendency to send the ship down when she got broadside?

A. Yes, sir.

Q. So her stern wouldn't be clear up to the cleat, would it? A. No.

Q. Was the Yucatan a loaded ship?

A. No, light.

Q. She was light, wasn't she? A. Yes.

Q. Hadn't you taken aboard part of your cargo from that dock?

A. About 200 tons, something like that; I don't remember exactly.

Q. Where would you stow that?

A. In the hold.

(Testimony of Captain A. C. Paulsen)

Q. Wasn't she loaded pretty heavy aft?

A. No.

Q. She wasn't loaded heavy aft?

A. No, sir; this was our first call at a loading dock after we got through discharging our north-bound cargo.

Q. You put it in the hold?

A. Put it in the hold.

Q. That would be way up forward, wouldn't it?

A. No.

Q. About where would it be, then?

A. We were working three gangs in there; we distributed it evenly all over the ship.

Q. Well, the Yucatan was 337 feet long, and if she was 130 feet up the dock, the last 130 feet of the Yucatan would touch the dock, wouldn't it, if you hung on? It would have touched the dock, wouldn't it?

A. Yes.

REDIRECT EXAMINATION

Questions by Mr. REED:

State whether or not there was a light burning there in San Diego on this buoy, when the boat went on the mud.

A. No the light was out of commision.

Q. What light? A. The gas buoy.

Q. Was there any red flag, or red ball displayed from the bridge, when the bridge didn't open?

A. No.

(Testimony of Captain A. C. Paulsen)

Q. Do you know how long you claim it was between the time of the first signal, and the time of the bridge opening?

A. About 15 minutes.

Mr. REED: We want to introduce, if the Court pleases, the United States regulation in regard to the handling of bridges.

Mr. EVANS: May it please the Court, as I recollect the statute, it requires that these regulations be promulgated by the Secretary of War, and these are signed by John C. Scofield, Assistant and Chief Clerk to the Secretary of War. It is a delegation of authority to an official, and I question whether it can be redelagated to any under official.

COURT: Put it in the record, the statute defines the duties of the operator of the bridge.

Marked "Claimant's Exhibit 6".

Mr REED: I don't think so; I think it is a matter of regulation.

COURT: Don't the statute require them to open promptly?

Mr. REED: Yes, I know; but this is the one that provides that, and it is signed by the Assistant and Chief Clerk to the Secretary of War.

Mr. Evans: I make the further objection it is required, before they become official regulations, that they be posted in three different places. There is no proof that has been done. I have always ques-

(Testimony of Captain A. C. Paulsen)

tioned, and question now, whether we have any valid legal regulations in this harbor, covering the movements.

Mr. REED: I ask to amend my amended answer, and plead custom and usage.

Q. Now, Captain, what is the custom and usage in the City of Portland, as to the action of the bridge when a boat whistles for it, as to its opening? What is it supposed to do, according to custom and usage? Do you know the custom here and the usage?

A. Yes, sir.

Q. What is it?

A. Well, passing a bridge, we usually - - -

Mr. EVANS: I object to that, because that is a matter which must be regulated by statute.

COURT: I think the Federal statute makes it a crime not to open a bridge promptly when called for.

Mr. EVANS: But before there can be any crime, there must be a regulation saying when that must be opened, and that regulation must be promulgated by the Secretary of War, in the manner provided by statute, and that I claim has never been done, with reference to a regulation in Portland.

COURT: Isn't it a crime not to open? Isn't it prescribed by statute?

Mr. EVANS: Not to open when the signal is given, the signal as prescribed by the Secretary of

(Testimony of Captain A. C. Paulsen)

War under authority delegated to him. The Secretary of War has never done that. If this regulation is what it purports to be, but the Chief Clerk in the Secretary's office has undertaken to do it. It is a matter that has been up to that Department before, and they should have regulations some time ago, but I don't desire to take any particular advantage of Mr. Reed. I make the objection formally.

Mr. REED: You didn't withdraw the objection. The objection is there. Either withdraw it, or make it.

COURT: It is in the record.

Mr. REED: There are two objections—one, it is signed by the clerk, and the other it was not posted.

Mr. EVANS: No proof it has been.

Mr. REED: The objection isn't withdrawn, and I will have to go down here to Mr. Upson of the Engineer's Office to prove this. I, of course, never thought they would raise that. I will have to do it sooner or later, prove this is a regulation.

Mr. EVANS: I will withdraw it. I don't care to take that kind of advantage of Mr. Reed under the situation. I do think it is a matter the War Department should straighten out.

Mr. REED: Now, if the Court please, I want to offer in evidence, City Ordinance No. 18078, Sections 2 and 6.

Mr. BECKWITH: No objection.

Marked "Claimant's Exhibit 7."

(Testimony of Captain A. C. Paulsen)

RECROSS EXAMINATION

Questions by Mr. EVANS:

May I ask you another question, please? I understood you to say something about the wind. How was the wind this day, if you recollect?

A. Southeast.

Q. Strong or not? A. 15 miles.

Q. Well, I don't know, and the Court don't know, whether that is a strong wind in the harbor or not.

A. Well, 15 miles would be pretty hard to explain, except you know the scale of measuring wind by but 15 miles is not what is called a strong breeze, but just enough to make you feel there is a wind.

Q. Help to carry the boat around, would it?

A. To a certain extent, yes.

Q. And from Mr. Beckwith's question, it would appear that had you held on to your stern line, you would have landed up against the dock, against the Boston, because you were drawn up there to within twenty feet of the cleat? A. Yes, sir.

Q. And your vessel then would have lined up, would it not, against the dock in such a manner, because the dock runs off at an angle? In such a manner, it wouldn't have struck the Boston. Here is the angle I refer to.

A. The ship was hitched up by the stern line. She would have got considerable headway swinging around. Would throw her up against the Boston when coming down here. She would have got con-

(Testimony of Captain A. C. Paulsen)

siderable headway on her, and 130 feet here, she sure would overlap the Boston that much.

Q. But she was fastened 150 feet up the dock.

A. And she was within 20 feet of that.

Q. That would be 130 feet of the dock?

A. About that.

Q. Then 130 feet of your vessel - - -

A. Would take the dock. The rest would lay over here.

Q. How long is the dock? A. I don't know.

Q. The dock is longer than your vessel?

A. This part of the dock from here to there is not in use. It is a kind of a corner affair coming in here, not used for anything. Here is what you call the extreme end of the dock.

Q. Your vessel laying 130 feet across the dock, there would be a fulcrum, and would have saved the boat. A. No, I don't think so.

Q. You could, I say, if fastened here?

A. Well, I fastened her, you must remember, with a line from this quarter; would have caused the ship to swing clean around, with the headway she would have had on her would have gone right in, for the current set right in here on the Boston.
Questions by Mr. BECKWITH:

If the Boston hadn't have been there, she would have hit the beach?

A. No, I don't think would have hit the beach. The Boston is considerably away from the beach, you know.

(Testimony of Captain A. C. Paulsen)

REDIRECT EXAMINATION

Questions by Mr. REED:

Captain, what was done with the plates?

A. Temporarily repaired.

Q. What was done to temporarily repair? Have they been repaired?

A. Temporarily.

Q. You said they hadn't been repaired, though.

A. I said were temporarily repaired. We got a temporary repair job on it.

Q. What have you done? Have you taken the plates out? A. No.

Q. What have you done?

A. We patched them.

Q. You patched the side of the boat there, for a distance of how many feet?

A. Fifteen.

Q. You put wooden plates on, haven't you, and bolted them inside and out? A. Yes, sir.

Q. Covered these plates with wooden covers?

A. Yes, sir.

RE CROSS EXAMINATION

Questions by Mr. EVANS:

I understand you to say, when you cast off, the draw was opening? A. Yes.

Q. And that you cast off when you were about 123 degrees?

(Testimony of J. Newmarker)

A. 120 or 123 degrees. Between 120 and 130 degrees.

Witness excused.

J. NEWMARKER

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

What is your occupation?

A. Marine engineer.

Q. What is your present position?

A. Chief engineer of the Yucatan.

Q. Were you on her when this accident took place?

A. Yes, sir.

Q. Were you running the engines that day?

A. Sir?

Q. Were the engines in use that day?

A. Yes, sir.

Q. Was she under her own steam that day?

A. Yes, sir.

Q. And how much steam?

A. Well, we had 130 pounds.

Q. And where were you when this scraping took place?

A. When the first bell came from the engine room, I was in the engine room at the time. I had a water tender working on the pipes, and I went in the fidley. When I heard the danger whistle, I looked out, and

(Testimony of J. Newmarker)

as I looked out, the port, then was when the Boston's gun came in. It struck on the dead light, and kept running aft, and broke four dead lights. At that time, the ship swung off a little bit, and she cut the guy from the after boom, and I seen that come, and while we looked out agin, why, we seen the top of the steam launch, or some boat, I think it is the steam launch.

Q. It was that boom that—the hook of the boom, caught the steam launch?

A. Yes, the mouth of the gun carried away the eye bolt on the side of the ship, and broke through the side, sir.

Q. And loosened the cargo boom.

A. Yes, the boom swung.

Q. And it was that that caught the canopy of the steam launch? A. Yes, sir.

Q. On the Boston. Have you ever gone up to the Globe dock with a tow boat, when there was steam upon the Yucatan?

A. Well, we have steam up, yes, sir, but the donkey boiler, if working on the main engines, would use a tow boat.

CROSS EXAMINATION

Questions by Mr. BECKWITH:

Chief, how far below the deck of the Yucatan, are those dead lights situated? How many feet?

A. Well, we will say—from what deck?

Q. That is your top deck.

(Testimony of F. B. Wright)

A. The boat deck? About 2 1-2 feet, something like that.

Q. Are those dead lights used to let light into the staterooms, or the compartment?

A. At the present time, it is the saloon, the dining room.

Q. Now, where was your eye bolt located, to which this boom guy was attached?

A. Well, that is - - -

Mr. REED: You can see in the photograph there.

A. Probably right abeam of the mast, and maybe eight inches from what I call the—well, the top of the deck; I don't know what they call it.

Q. Top of the deck? A. Yes, sir.

Q. How could that gun, while ripping these dead lights out, also catch that guy?

A. As it left the last dead light, the gun slid up the side of the ship; the mark is still on her. I think you can see there in the photograph.

Witness excused.

F. B. WRIGHT

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

Please state your occupation?

A. Chief Clerk.

Q. Where?

(Testimony of F. B. Wright)

A. Ainsworth Dock, San Francisco and Portland Steamship Company.

Q. Where is that with regard to the Globe Dock?

A. Almost directly across the river.

Q. Do you know how wide the river is there?

A. In the neighborhood of 800 feet.

Q. On the 3rd of March, did you see anything of this occurrence we are talking about?

A. Well, I saw the latter part of the collision.

Q. Please tell the Court about it.

A. I happened to be in the office at the time, and I heard the Yucatan whistle for the Burnside Bridge—the Broadway Bridge, I should say—two times, and shortly afterwards, a danger whistle. Immediately I heard the danger whistle, I naturally ran out to the face of our dock to see what the trouble was, inasmuch as I had heard the two whistles for the bridge before that, and when I got out on the face of the dock, why, the Yucatan's cargo fall, from where I could see it, was just raking the hood off the Boston's launch.

Q. What was doing on the bridge, the Broadway Bridge?

A. The bridge was closed at the time, and it opened, probably half a minute, or three quarters of a minute, after the hood had been taken off the Boston's launch.

Q. I understood you to say you went out when you hear the danger whistle? A. Yes.

(Testimony of F. B. Wright)

Q. Your office is right there on the edge of the dock, is it?

A. Our office is on the south end of the Ainsworth dock.

Q. I mean on the river side. You stepped out and took a look?

A. No, not on the river side; across the dock from the river.

Q. Is it inside?

A. Where the office is, is built out beyond the dock so we can see the river from the office.

Q. The bridge at that time you say was closed?

A. At the time I got to the face of the dock.

Q. And it immediately opened; it opened shortly?

A. It opened soon after I got out to the face of the dock.

CROSS EXAMINATION

Questions by Mr. MAURY:

What did you look at first when you came out there—the bridge?

A. I looked at the bridge.

Q. You looked at the bridge? A. Yes, sir.

Q. The boat had already struck, you say?

A. I imagine it had, because from where I could see, I couldn't see the gun which I understand she hit first.

Q. It was this danger signal that attracted your attention? A. Yes, sir.

Q. You heard Captain Paulsen say the danger

(Testimony of Captain H. L. Chase)

signal and the collision were almost simultaneous?

A. No; I just this minute came in the court room.

Q. But it was the danger signal that attracted your attention?

A. The danger signal—well, I heard two whistles for the bridge first.

Q. You never looked at the bridge until after the signal?

A. I couldn't see the bridge until after I ran to the face of the dock.

Q. That was after the danger signal?

A. Yes.

Witness excused.

CAPTAIN H. L. CHASE

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

Captain Chase, state your occupation.

A. Steamboat captain.

Q. Of what boat? A. Cascades.

Q. Did you see this occurrence on the 3rd of March? A. Yes, sir.

Q. Please state to the court what you saw, and where you were.

A. I was just above the O R & N bridge, and I heard her blow for the bridge a couple of times, and he blew the danger signal, and it drew my attention,

(Testimony of Captain H. L. Chase)

and I looked down and saw her position. At that time the Broadway Bridge wasn't open yet. I don't know just what position he was in. I was above the bridge, and couldn't tell exactly, but he was headed around.

Q. Above the present O R & N bridge or the old one? A. The present one.

Q. Did you see the Broadway Bridge?

A. Yes, sir.

Q. Will you state to the Court whether it was open or not?

A. It was not open at the time he blew the danger signal.

Q. How long after that did it open?

A. I couldn't tell.

Q. Did you take a look?

A. I took a look to see. I heard her blowing for the bridge, and heard them blow the danger signal, and that drew my attention.

Q. The bridge was not open?

A. The bridge was not open.

Q. The Broadway Bridge?

A. The Broadway Bridge.

CROSS EXAMINATION

Questions by Mr. EVANS:

You don't know whether the captain had cast off when he blew the danger signal, or not?

A. No, I don't know whether had cast off her

(Testimony of Captain H. L. Chase)

stern spring, but saw as he was swung around, his lines were gone forward, and he was swinging; at what angle, I don't know.

Q. If the vessel had been handled properly, there was plenty of time after blowing the danger signal, at that position, for the draw to open.

A. Beg pardon?

Q. Suppose the draw had opened at the sounding of the danger signal; suppose they had begun to open then.

A. That hardly gives a person time then to get out, and get into position. They ought to open sooner, with the current of the river, and a big steamer, I should think.

Q. The testimony is, he had already signalled twice before that, according to his testimony.

A. Yes, sir.

Q. And there wouldn't be much question but what the men on the bridge would have it cleared to operate. Suppose the draw had started to raise immediately on hearing the danger signal, considering the position of that vessel, and the distance away, there would have been ample time to have got that bridge up so the boat could have got through.

A. That depends on the circumstances, how fast the bridge operates.

Q. Did it take as long to operate that bridge as usual, or longer?

A. Sometimes it takes longer than others. Sometimes they have trouble raising one side, and then

(Testimony of Captain H. L. Chase)

raise the other. Not always the same period in opening.

Mr. REED: Does the county claim you have to blow the danger signal to get the draw?

Mr. EVANS: Oh, no.

Q. You have never operated that bridge?

A. No, sir.

Q. You don't know anything about it?

A. No, sir.

Q. Are you a seafaring man? A. No, sir.

Q. Just operate - - - A. River boats.

Q. River boats.

Questions by Mr. BECKWITH:

Where was the Cascades lying?

A. This time laying at East Davis Street.

Q. Where were you?

A. I was on the Cascades.

Q. Where you saw from there?

A. Very plainly.

Q. East Davis? A. East Davis.

Q. Do you remember any other ships on the west side of the river at that time?

A. On the west side?

Q. Yes.

A. You mean which part of the west side? Which part of the river?

Q. Right opposite.

A. Directly opposite to where I was?

Q. The Yucatan. A. No, I couldn't see.

(Testimony of Captain Julius Allyn)

Q. At the time—do you remember the dredge there that lay there so long? The Chinook, I think it was.

A. She was lying there about that time.

Q. Do you remember the dredge tied up there, tied to this dolphin there?

A. Yes, she was there all winter, four or five months. She lay at the Alaska dock, just above the Ainsworth dock.

Witness excused.

JULIUS ALLYN

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

Captain, please state your occupation.

A. Columbia River and Willamette River Pilot.

Q. At the present time? A. Yes, sir.

Q. Do you have a license for the Columbia River?

A. Yes, sir.

Q. And the Portland Harbor? A. Yes, sir.

Q. Were you in the court room here and heard Captain Paulsen's testimony, regarding leaving the Globe Milling dock with the Yucatan on the 3rd day of March? A. No, sir—you mean today?

Q. Yes. A. Yes, sir.

Q. Were you in a position to see the way he handled the models and the spring line?

(Testimony of Captain Julius Allyn)

A. Yes; I could see fairly well from where I was sitting.

Q. And your experience—how many years have you had here as a pilot?

A. Very close to nine years.

Q. And do you have charge of sea-going ships?

A. Yes, sir. That is, I mean for nine years.

Q. Have you ever handled the Yucatan?

A. Yes, sir, I have; not very often.

Q. State whether or not that handling of the Yucatan leaving the Globe Milling dock at that time was, to a man acquainted with the business, in a seamanlike and proper method.

A. Yes, sir.

Q. Or a negligent and careless method?

A. No, sir, was very proper.

CROSS EXAMINATION

Questions by Mr. EVANS:

The proper time to cast off is when the vessel is around at 120 degrees?

A. I wouldn't say the degrees, for if I am doing, I use my own judgment, as to the proper time to cast off.

Q. You were testifying he handled it properly, and that is what he testified to. When 120 degrees around there, so that is the proper time.

A. I would not say the degrees. I say I use my own judgment if I am doing it myself.

(Testimony of Captain Julius Allyn)

Q. But you were not testifying, when you say the captain handled it properly, about your own methods. You say he handled it properly.

A. He didn't say degrees. He said swinging on the stern line, and I said yes.

COURT: He said when he cast off he was about 120 degrees.

Mr. REED: The question isn't complete. He said the wind blowing 15 miles.

Mr. EVANS: He said he cast off at 120 degrees.

Mr. REED: And the wind blowing.

Mr. EVANS: Yes, I think he said the wind was blowing a little, and the draw was open at that time when he cast off. Now, if the vessel had been handled properly, he ought to have been able to make that turn if cast off at 120 degrees, ought she not?

A. That I couldn't say. 120 degrees; as I say, I use my own judgment.

Q. How are you able to say Captain Paulsen handled the vessel properly, when he cast off at 120 degrees?

A. The question put to me was if he cast off properly when swinging on the stern line.

Q. That is what you meant? A. Yes, sir.

Q. That is all you were testifying to?

A. Yes, sir; I wasn't testifying to angles and degrees, because I don't know anything about that; haven't any method of taking those when you are doing that kind of work.

(Testimony of Captain Julius Allyn)

Q. Was it proper for him to have been handling that vessel without a river pilot on board?

A. Yes; anybody can handle their own vessel that wants to.

Q. Don't you know that the law requires him to have a pilot on board?

A. I don't know anything about that.

Q. Why do they have you men employed, the Willamette River pilots, if it is proper for a captain who hasn't a license, to handle the vessel?

A. Well, it relieves the master of the vessel.

Q. You are tolerably interested to help Captain Paulsen here too aren't you?

A. Not necessarily.

Q. You river men don't like the fellows who tend these draws. They don't open promptly enough to suit you, do they?

A. No, they don't.

REDIRECT EXAMINATION

Questions by Mr. REED:

Isn't it a fact that many captains come to this port who have to have a harbor pilot, because they don't know the harbor? Or anything about it?

A. Yes, strangers.

Q. Isn't that a fact? That is the reason for the necessity for Portland Harbor pilots?

A. Yes. A stranger doesn't know one wharf from another.

(Testimony of Captain Julius Allyn)

Q. Isn't it a fact that any local captain, or local steamer that runs here, and is familiar with the harbor, but happens not to have got his license endorsed for the Portland Harbor, if he calls for a Columbia River Pilot, nevertheless the Columbia River Pilot does nothing, but the captain handles the ship?

A. Well, as a rule he does.

Q. Suppose Captain Paulsen would call you on the ship any time. He would still handle the ship, wouldn't he?

A. The rule has been the captain takes her away from the wharf, and then the pilot takes charge, as soon as clear of the wharf.

Q. I mean, as a matter of fact, the captains who know the harbor handle their own ship, and the call for the local pilots is from strangers that don't know the harbor?

A. Yes, sir; that is the general rule.

Mr. EVANS: The law fixes that. You better revise the statutes.

Mr. REED: I know. But there is another thing on this subject.

Q. All any captain who comes here frequently and knows the harbor and works his ship here, has to do, is to get his general license endorsed, isn't it?

A. Yes, sir.

Q. No examination or anything. Just as soon as he has been here, they endorse it for the local --

A. That of course, I don't know anything about.

(Testimony of Captain Julius Allyn)

That lays with the local Inspectors as to examinations and anything like that.

CROSS EXAMINATION

Questions by Mr. BECKWITH:

Suppose you were getting away from a dock, and there was a vessel lying just below you on about the same angle as the dock, her stern sticking out a little bit, was a heavy current setting in towards the dock this way, would you — — —

Mr. REED: Do you call two knots a heavy current?

Mr. BECKWITH: Yes.

Mr. REED: All right; go ahead.

Q. And you were getting away from this dock here, and the current along that dock was running in towards this other vessel, would you consider it proper to wait until you got within 120 degrees before you cast off?

A. Well, I wouldn't—as I said before, I wouldn't make any statement on degrees. I say I would use my own judgment in letting go.

Q. At that time.

A. Yes, myself. Of course, I don't know anything about the condition of the vessel that day.

Q. Isn't it the custom, Captain Allyn, to let go, when coming downstream, to get away from the dock, to let go within 90 degrees about broad off the dock? A. I won't say degrees.

(Testimony of Captain Julius Allyn)

Q. When about broad off the dock; isn't that the custom? Isn't that the best way to get away from the dock?

A. As I say, if I am doing it, I use my own judgment.

Q. What would your judgment be in a case like that?

A. Have to be according to wind and circumstances.

Q. Supposing a strong northwest wind blowing, and a two knot current coming downstream, and you were coming downstream?

A. Under those conditions, I probably—and at that rate—northwest wind and two knot current, I would probably let her go until she was headed pretty near for the Broadway Bridge before I would let go.

Q. If another vessel was lying below you, and the stream and the current setting in?

A. She must have sufficient power to clear the vessel.

Q. But wouldn't have headway in getting away from the dock.

A. Would have to have her own power, or wouldn't have headway.

Q. A single screw vessel wouldn't have any headway at all.

A. Wouldn't starting, but would pick up and steer as soon as you got started.

Witness excused.

(Testimony of J. S. Hicks)

J. S. HICKS

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

Mr. Hicks, please state your occupation.

A. Foreman of the Broadway Bridge.

Q. When did you first become foreman of the Broadway Bridge?

A. When the bridge was open for operation, about the 20th of April.

Q. 20th of April? A. Yes, '13, 1913.

Q. What was your occupation previous to that?

A. I was on the Hawthorne Bridge from the time that opened until then.

Q. Well, as foreman—does the bridge foreman operate the draws?

A. Yes, we take a shift, the same as the rest.

Q. I mean they do operate at times and know about them? A. Yes.

Q. On the Broadway Bridge, how long will it take to clear the draw of traffic, on receiving a signal to open from a boat?

A. That depends on the — — —

Mr. EVANS: At what time of day?

Q. Any old time; the longest time, when crowded?

A. That depends on the traffic.

Q. All right; at the heaviest traffic.

(Testimony of J. S. Hicks)

A. Well, it will go from—oh, probably two or three minutes.

Q. Two to three minutes? A. Yes, sir.

Q. How long does it take to lift that draw by machinery?

A. Well, sir, it will take about one minute to raise; that is, after we start.

Q. After you get there, get your hands on the lever.

A. After it gets started. Of course, you can run slower than that.

Q. Run slower yes. Who was operating the bridge on March 3rd?

A. Well, I wasn't there. I couldn't say. I was out — — —

Q. Do you know a man named Smith that was gateman on the bridge, and then foreman?

A. Yes.

Q. Did you ever work on the bridge with him?

A. Yes.

Q. What was his occupation previous to working on the bridge?

A. I understand he was a blacksmith.

Q. How is that bridge operated—the Broadway bridge—by what power? A. Electric power.

Q. Did Smith know about electricity?

Mr. EVANS: I object as not competent, and improper.

COURT: Was he in charge of the bridge at the time?

(Testimony of Robert V. Smith and J. S. Hicks)

Mr. REED: I haven't proved that yet. That is the man; I haven't proved it. I suppose you will admit Smith was in charge of the bridge at the time, will you?

Mr. EVANS: Smith was on the bridge. I am not sure who was in charge.

Mr. REED: All right. (To witness) Get off.

Witness excused.

ROBERT V. SMITH

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

Mr. Smith, I believe that you were working on the Broadway Bridge on the 3rd of March?

A. Yes, sir.

Q. Were you operating the bridge when this Yucatan business came up?

A. I was.

Witness excused.

J. S. HICKS

Recalled by the Claimant.

DIRECT EXAMINATION

Questions by Mr. REED:

Do you know Mr. Smith, who just testified?

A. Yes, sir.

(Testimony of J. S. Hicks)

Q. Was he working on the Broadway Bridge when you were? A. Yes, sir.

Q. In what capacity?

A. Well, he was gate tender when the bridge first opened for operation, and then he was put in as an operator; that is, broke in as an operator.

Q. Who broke him in as an operator?

A. There was two of us. I helped do it.

Q. You helped do it? A. Yes, sir.

Q. At that time did he know anything about electricity? A. No, sir.

Q. Was he able to handle the electric appliances in the case of the blow-out of a fuse, or a matter of that kind?

A. Well, he didn't seem to be.

Q. Well, did he, though? A. He did not.

Mr EVANS: Do you claim a blow out on the bridge? A fuse blown, or do you claim that? You haven't alleged anything like that in your libel.

Mr. REED: Do you claim it?

Mr. EVANS: No.

Mr. REED: Then I don't either.

Mr EVANS: Then why the proof?

Mr. REED: I want to show he didn't know how to put in a fuse.

Mr. EVANS: Why?

Mr. REED: To show he was incompetent.

Mr. EVANS: You don't allege that.

(Testimony of J. S. Hicks)

Mr. REED: I think I do allege it and allege it pretty hard. We will go and look.

COURT: Go ahead and put in your case. I don't see what this has to do with the case.

Mr. EVANS: You can put in a fuse yourself.

Mr. REED: That is more than Smith could do.

Q. Now, then, do you know Mr. Holman, one of the County Commisinoers? A. Yes, sir.

Q. I will ask you to state whether or not—in the first place, Mr. Smith was relieved down there on the 31st of March, wasn't he, shortly after that?

Mr. EVANS: I object as incompetent, irrelevant and immaterial.

COURT: I don't know what that has to do with this case.

Mr. REED: I want to show he was relieved for incompetency.

COURT: Well, if he was relieved for incompetency, and his incompetency delayed the opening of this bridge, that might be some material matter.

Mr. REED: A general incompetency would not?

COURT: General incompetency would not be sufficient, unless it affected the operation of the bridge at that time.

Mr. REED: I mean incompetency in operating the bridge.

COURT: Very well.

(Testimony of J. S. Hicks)

A. He was relieved on the first of April; that is the 31st of March was his last day.

Q. State whether or not—do you know Mr. Holman, one of the County Commissioners?

A. I do.

Q. State whether or not Mr. Holman ever expressed to you any fact in regard to Mr. Smith's competency as a bridge operator?

Mr. EVANS: I object to that as incompetent, irrelevant and immaterial.

COURT: I think the objection is well taken on that. Mr. Holman's statement won't bind the county.

Q. I will ask you, then, who is it that employes and discharges the bridge employes?

A. Well, I guess the foreman at the present.

Q. What? A. The foreman at present.

Q. The foreman, yes; but at that time?

A. That was the bridge superintendent.

Q. The bridge superintendent? A. Yes.

Q. Was there a bridge superintendent on the 31st of March?

A. Well, he was let out just about that time, right along there. I don't know. The last week in March.

Q. At this time, then, who handled the employes on the bridge? A. Up to that time?

Q. At that time, and about the last of March?

A. Why, the superintendent; the superintendent of bridges and ferries.

(Testimony of J. S. Hicks)

CROSS EXAMINATION

Questions by Mr. EVANS:

Mr. Smith succeeded you on the bridge, did he not?

A. Yes, sir.

Q. You were let out, and he took your place?

A. Yes, sir.

Q. You haven't been very good friends since then?

A. Haven't seen the man since.

Q. Haven't been very friendly towards him, have you?

A. Have nothing agin him particularly.

Q. You don't like him, do you?

A. Well, I said I didn't have anything agin him.

Q. You don't like him, do you?

A. I don't care anything about him.

Q. When you testified he didn't know how to put in a fuse, you didn't mean that?

A. I meant incompetent.

Q. That is your opinion, but you said he didn't know how to put in a fuse over there. Do you mean to go on oath swearing Smith didn't know how to put a fuse in at the time this accident happened?

A. Did I say he didn't know how to put in a fuse?

Q. That is my recollection of the testimony.

A. That was the question put to me.

Mr. REED: You can answer. Go ahead and answer fully.

A. He didn't put in a fuse when one was out.

Mr. REED: Tell about it fully.

(Testimony of R. W. Orewiler)

A. Well, I wasn't on the bridge at the time.

Q. It isn't much of a trick to put in a fuse when it blows out, is it? A. No, sir.

Q. Anybody could do that, couldn't he?

A. He could, if he knows where to look for it.

Q. You showed him because you trained him?

A. I didn't show him. They had to send and get a man.

Q. I thought you trained him. Didn't you tell the Court you helped to drill this man so he would know how to operate the bridge? A. Yes, sir.

Q. You did your duty?

A. I did my duty while I was there, but this happened while I was away.

Witness excused.

R. W. OREWILER

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. REED:

Please state your occupation, Mr. Orewiler.

A. Boiler maker, and ship repair man.

Q. Who are you with?

A. East Side Boiler Works.

Q. Did you examine this place on the Yucatan we are talking about? A. Yes, sir.

Q. What will it cost to repair that damage?

A. I estimate will cost about \$3250.

(Testimony of J. Newmarker)

Q. Explain why it would.

A. There is about five plates to come off there, five feet wide, and probably 60 feet long. The total amount of that—each plate is about five feet by fourteen feet, and those are all put on with counter sunk ritets. Then a lot of ribs, reverse bars and beams and bead iron to come off, and a whole lot of carpenter work will have to be removed, rooms there, ship's quarters.

CROSS EXAMINATION

Questions by Mr. EVANS:

When was this examination made?

A. Why, day before yesterday.

Mr. EVANS: I move to strike, as incompetent, irrelevant and immaterial. You can't tell how much damage was caused by wear and tear of the vessel at sea since then. They must have had a survey of the boat made at the time of this accident, and they ought to call testimony and show it.

COURT: No evidence the ship is in the same condition now as it was after this accident.

Witness excused.

J. NEWMARKER

Recalled by the Claimant

DIRECT EXAMINATION

Questions by Mr. REED:

Mr. Newmarker, I believe you put the wooden plates on these places where the gun hit?

(Testimony of J. Newmarker)

A. Yes, sir.

Q. And please state to the Court what the condition of the boat was day before yesterday, as compared with what it was right after this accident? Has there been any further accident or disruption of the carpenter work, etc.?

A. No. All we have done to it is to put these two planks on the outside, and fix up the inside of the saloon there, the carpenter work.

Q. I mean has there been any further damage occurred since this accident?

A. Nothing at all.

Q. When a man examines that today for an estimate, is it in the same condition it was the 3rd of March? A. Yes, sir.

Q. After the accident.

A. Except some new paint on it; that is all the difference.

Q. You have painted it; that is all?

A. Yes, sir.

Witness excused.

Mr. REED: That is our case.

CLAIMANT RESTS.

Mr. REED: Mr. Beckwith; I suppose there is no replication to be filed by you, and the answer of the county had been filed. I don't know just what order the County should submit its testimony.

COURT: If the Libellant has any rebutting testimony, put it in.

(Testimony of H. H. Hilton)

H. H. HILTON

Recalled by the Libellant in rebuttal.

DIRECT EXAMINATION

Questions by Mr. BECKWITH:

Do you know the tonnage of the Boston?

A. No, sir, not off-hand. Something like 3000 tons.

Q. About what is it?

A. I believe Captain Paulsen said—what is the Yucatan's tonnage, Captain Paulsen?

Captain Paulsen: 3500 gross.

Q. Now, what is the distance of this corner of the dock which is on an angle to the Globe Milling dock? The length?

A. The distance of the little angle which turns in towards the shore on the north side of the dock is 40 feet.

Q. And if it were 70 feet—I believe you testified it was 70 feet, didn't you, this morning, from the bow of the Boston to the nearest point of the dock?

A. When the collision occurred?

Q. Yes. A. Yes, sir.

Q. If this Yucatan was up the dock 130 feet, it would include 42 feet here and 172 feet, then 70 feet to the Boston, 242 feet, where would the Yucatan strike the Boston if she were lying here, say 130 feet of the Yucatan being up in here?

Mr. EVANS: How are those figures?

(Testimony of H. H. Hilton)

Mr. BECKWITH: If the Yucatan was 130 feet on the dock.

Mr. EVANS: Does that 130 feet mean above the angle there?

COURT: I understand the captain to testify about 130 feet up the dock.

Mr. BECKWITH: He said he didn't mean that angle there, because that part of the dock wasn't used. That would be 130 feet, and 42 feet, and 70 feet—242 feet.

COURT: What is the length of the Yucatan?

Mr. BECKWITH: 337 feet.

Q. Now, what is the length of the forecastle of the Boston?

A. The length of the forecastle of the Boston is 63 feet from bow to the peak of the superstructure.

A. That would strike, then, about 32 feet aft of the forecastle?

Mr. EVANS: May I suggest a question? How far is it from the bow of the Boston, to the first structure on the deck?

Mr. BECKWITH: That was 70 feet.

Q. Now, Mr. Hilton, you have been around the Boston a good deal during that time,—in March?

A. Yes, sir.

Q. Did you see many vessels come in and out that Globe Milling dock?

A. I have taken various docks. I took these

(Testimony of H. H. Hilton)

pictures from the Portland. I have seen the Portland the Yucatan come out from there two or three times.

Q. Did they ever go in close to the Boston before? Had you ever seen them?

A. Yes, those pictures I took show the Portland in very close to the Boston.

Q. That is, when lying at the dock?

A. Yes.

Q. I mean, getting away from the dock. Did you ever see them swing in close to the Boston as they went by? A. No, sir.

Q. The Boston had never been struck, or had any trouble with any vessels prior to that?

A. No, sir, not that I know of.

Q. This piano that was destroyed on the Boston—how long had the state had that piano, do you know?

A. The contract was made - - -

Q. Was it more than six months?

A. No, sir, I believe it was made along in the early part of October.

Q. Was it a new piano when you got it?

A. Yes, sir.

CROSS EXAMINATION

Questions by Mr. REED:

Mr. Hilton, please add up those figures so we can see them on a piece of paper. 130 feet the ship back, 40 feet more on the dock, then 70 feet.

(Testimony of H. H. Hilton)

A. Adds 240.

Q. 240, and the Yucatan is 337?

A. Yes, sir.

Q. So the Yucatan would have overlapped on the Boston the difference between 240 and 337?

A. Yes, sir; that would be 97.

Q. That would be 97 feet she would overlap, besides the length of the rope, spring line, whatever she had out?

Mr. BECKWITH: No, he said — — —

Mr. REED: I am asking the questions. Whatever part of the spring line she had out.

A. I don't know anything about the spring line.

Q. If he had it out. 97 feet would be the absolute distance on the Captain's testimony, according to Mr. Beckwith's figures?

A. Yes, sir.

Q. What? A. I guess so, yes.

Q. And how far was this forward gun from the bow of the Boston?

A. I couldn't say; I haven't measured it.

Q. Give a good guess, because you have measured everything else.

A. It might have been 85 feet.

Q. Yes; then she would have overlapped and hit that gun anyway, wouldn't she?

A. Yes, under that condition.

Q. Under that condition, it would have overlapped and hit the gun anyway?

(Testimony of H. H. Hilton)

A. If it was as you say, yes.

Q. As Mr. Beckwith said, not as I say. Go on those figures, and answer as Mr. Beckwith gave them to you, not as I gave them to you.

A. You are asking the questions.

Q. Aren't those the same figures he gave you, or am I wrong?

A. Well, I am just guessing; just guessing at those distances.

Q. I know you are just guessing. I don't say you are anything but guessing on it; but please state then if would have hit the gun, or not, on Mr. Beckwith's figures?

A. Certainly.

Q. Yes. That is all.

Witness excused.

Mr. BECKWITH: That is our case.

LIBELLANT RESTS.

(Testimony of Robert B. Smith)

COUNTY'S CASE.

ROBERT B. SMITH

Recalled on behalf of Multnomah County.

DIRECT EXAMINATION

Questions by Mr. MAURY:

Your name is Robert B. Smith?

A. Yes, sir.

Q. What was your occupation, Mr. Smith, on the 3rd day of March, 1914?

A. Charge of the Broadway Bridge, Portland, Oregon.

Q. You were in charge? A. Yes, sir.

Q. Foreman? A. Yes, sir.

Q. Do you remember—what were your duties as foreman, Mr. Smith, of the Broadway Bridge?

A. That of an operator. To keep things in its place, and to look after the men on the bridge.

Q. How many men did you have?

A. Eleven, all told, sir.

Q. On the bridge? A. Yes, sir.

Q. Just tell the Court how it is operated, Mr. Smith.

A. Just tell what, sir?

Q. Just tell the Court how that bridge is operated.

A. The man attending to duty keeps a watchful eye for boats coming north or south in the river.

(e stimony of Robert B. Smith)

After the boat's signal is given, to raise the draw, he uses his own discretion, as far as I knew, or ever done, at the time to open the draw, at the distance the boat may be from the draw. And I heard the boat in question whistle, but didn't know at the time it was that boat, and didn't know where it really came from, but I heard the alarm for that draw.

Q. I just want to make this more chronological, is the only thing. At what time did this happen? At what time did the collision between the Yucatan and the Boston happen?

A. Between the hours of eleven and one, I should judge, sir. Sometime the noon hour.

Q. Some time between eleven and one?

A. I think so.

Q. The question I asked a minute ago was not to describe this particular accident, but to describe to the Court the way the bridge is operated, as a general rule, so we can get it in the record.

A. After hearing a whistle, or an alarm to go through the bridge, the operator rings a bell, which brings the gatemen to their place, and they shut the gates, shut the gates to the traffic on the bridge. After that has been done, and the gatemen look carefully to see that no passengers or anything on the bridge, the operator is given a signal to raise the bridge. With that he goes ahead and raises the draw and waits for the boat to enter.

Q. And how is that given? Tell about opening the draw? How long does it take to open the draw?

(Testimony of Robert B. Smith)

A. In my experience, sir, I probably took from a minute, maybe, to clear the track—a minute and a quarter or something like that. Perhaps along a minute, a minute and a quarter or sometimes less, to raise the draw.

Q. To clear the traffic, of course, depends upon the condition of the traffic at the time?

A. Exactly.

Q. The Yucatan went through there about noon, you say?

A. Approximately noon, yes, sir.

Q. Now, Mr. Evans wants this brought out. What machinery is used to raise that draw?

A. Two controllers.

Q. What is that? A. Two controllers.

Q. Just what is done?

A. You mean to operate?

Q. Yes; to raise the draw.

A. To see that every switch is in its place, the air—have a required number of pounds of air, and to release air, release the brakes and apply, as the phrase is, the juice to the machinery, and up goes the draw.

Q. How do you do that? How do you apply the juice?

A. By working the controllers around the different numbers or the different figures. One man operates both sides, both levers.

Q. Those controllers, what are they like? Something like on the street cars?

(Testimony of Robert B. Smith)

A. Similar to the street cars, yes, sir.

Q. What was the condition of the traffic about noon, March 3rd, about the time the Yucatan went through there?

A. You mean - - -

Q. The condition of the traffic on the Broadway Bridge.

COURT: At the time you heard the Yucatan's alarm, what was the condition of the traffic?

A. Why, sir, as far as I can recollect, why, I didn't particularly notice the traffic; as usual; a few teams going backward and forward, and cars making the regular trips, sir.

Q. The traffic at the noon hour, how is it with reference to the traffic at other times of the day?

A. More after noon than at the noon hour, because of the noon rest.

Q. The traffic is not so heavy, you mean?

A. The traffic not so heavy, no, sir.

Q. Which way was the Yucatan pointed when he gave his first signal?

A. If the river was north and south, she pointed south.

Q. Had she yet begun to make the turn?

A. No, sir.

COURT: I understood you to say you didn't know where it came from when you first heard his signal.

A. No, sir.

(Testimony of Robert B. Smith)

COURT: How do you know what the Yucatan was doing?

A. That probably will come later, I suppose.

Q. Did you look at the Yucatan when you heard the signal?

A. Looked all around the river; could see nothing moving.

Q. Took notice of the Yucatan, did you?

A. If I remember right, there were only two boats on that side of the river, where the sound of the whistle came from, and on the other side, I don't recall about any being there, but I saw no boats in motion.

Q. The Yucatan was pointing straight upstream, is that right?

A. Yes, sir.

Q. Did you hear the second signal?

A. I did, sir.

Q. And which way was the Yucatan pointing then?

A. South southwest, sir.

Q. South southwest?

A. South southwest, sir.

Q. That means more south than west?

A. Yes, more south than west.

Q. And her stern was fast to the dock, was it?

A. That I couldn't tell from there, sir; I couldn't tell about that.

Q. Now, what position was the Yucatan in when you opened the draw?

A. Well, sir, as near as I could see, I would say

(Testimony of Robert B. Smith)

due west; maybe a trifle to the south, may have been a trifle to the north, but I am positive that she was looking to the west.

Q. And did the bridge remain open from that time on until she got through?

A. It did, sir.

CROSS EXAMINATION

Questions by Mr. REED:

Mr. Smith, while she was pointed as you say about west when the bridge commenced to open, was that before or after the danger signal?

A. That, sir, was just as I had the bridge open; as I raised—as I had the draw open, sir.

Q. I say, was that before or after the danger signal? They all swear he gave the danger signal.

A. Yes, yes.

Q. Yes.

A. Well, when I raised the bridge, I looked and saw the—when I gave the order to raise the bridge, and commenced to raise the bridge, the boat was then due west.

Q. Almost due west?

A. As near as I know.

Q. After he raised; then he gave the danger signal after that, did he?

A. No, sir; gave no whistle after that.

Q. The danger signal was before that?

A. Was due west when the danger signal, as you call it, was given.

(Testimony of Robert B. Smith)

Q. But the bridge was open then.

A. Well, near due west, I suppose this way. When I commenced to open the draw, he was still near due west.

Q. Was the danger signal given before or after you commenced to open the bridge?

A. Oh, certainly before.

Q. Given before? A. Yes.

Q. How long between the time of the first whistle—how long between the time of the first whistle and the time the bridge opened?

A. My dear sir, I forget, and I made a statement to you which said to you, making it one minute longer than what the log in the ship testified to.

Q. What was that? A. I forget, sir.

Q. Didn't you tell me it was 19 minutes, in Mr. Holman's presence in my office—19 minutes between the signal and the time the draw lifted?

A. That I couldn't say, sir.

Q. You don't remember?

A. I don't remember that part of it, no.

Q. That is forgotten by you?

A. I wish I did.

Q. That is all right. We will prove it by Mr. Holman. Now, then, do you have any recollection of the danger whistle at all that day?

A. Oh, yes, sir; yes. I recollect it.

Q. Did you see anything of this contact between the Boston and the Yucatan?

A. No, sir, I didn't see that.

(Testimony of Robert B. Smith)

Q. Why didn't you look at it?

A. Because when I heard the danger signal, I thought I had better open the draw. I had no time. The boat was in position for the draw, and so I opened the draw. I didn't see that.

Q. The draw opens in about a minute.

A. I know, sir.

Q. How long does it take to swing around from the rest position?

A. I was at my post.

Q. Your post is a look-out position?

A. Not when I have the machinery in hand.

Q. Just the same it is glass all around for the purpose of seeing.

A. You can't see out.

Q. You mean to say you can't look out that window and see the Yucatan?

A. Not all around, when the draw is open.

Q. So you were in position where you couldn't see at all? A. Oh, no, sir.

Q. Then you couldn't see the ship across the river, if you couldn't see.

A. I didn't see the action.

Q. No, but east and west. If you can't see out the look-out box, how do you know she was east and west?

A. Because I didn't commence to open the draw when she was east and west, sir.

Q. Now, what was the reason you didn't open,

(Testimony of Robert B. Smith)

Mr. Smith, at the time of the first signal? Because you didn't know what boat it was?

A. Well, I will tell you, sir, if I may use my own language.

Q. Go ahead and tell the Court.

A. I was in my place of duty, and I heard the signal. I looked around and saw no boats in evidence anywhere. I went down the deck and crossed the other side of the river, the south side of the bridge, and asked the gateman, and I saw no boats in sight; well, we went on for a little while; when she had pulled out a little, gave a second signal; never at any time in position for the bridge. I hesitated then about opening the draw.

Q. Hesitated? A. Yes, sir.

Q. Why?

A. Because the boat was anywhere but in position for the draw.

Q. So, though you heard both the signals for the bridge, you nevertheless didn't open?

A. No, sir, I didn't open.

Q. You declined to open on the whistle?

A. She wasn't in position for the draw.

Q. So that was the reason the bridge didn't open?

A. Yes, sir.

Q. Because she wasn't in position?

A. Yes; I told you, and you asked for the reason for the danger signal.

Q. Yes.

A. After she had blown the danger signal, I opened

(Testimony of Robert B. Smith)

the bridge, and I didn't know, sir, until after the boat had passed through, that she had struck—the Yucatan—until the gates were closed again.

Q. All right, Mr. Smith. Now, then, in the house where the levers are operated, there is a good deal of electrical machinery, isn't there?

A. Yes, sir.

Q. The sides of the house are filled with switches and contrivances? A. Yes, they are.

Q. And it requires some knowledge of electricity to handle them, doesn't it?

A. So I am told, yes, sir.

Q. You know that?

A. I think I know, yes sir.

Q. Does it, though? A. Sir?

Q. Does it require any knowledge about that sort of thing?

A. Well, sir, I have lived 56 years, and everything I have undertaken sir, has required knowledge.

Q. No, but I mean about this, these in there. Should there be some knowledge about electricity and that sort of thing? Well, as a matter of fact, didn't the bridge close once for 45 minutes, and stay that way, because nobody knew how to put in a switch plug?

Mr. MAURY: I don't see the point of this examination. There isn't any charge of any negligence over that delay in opening the draw. That is the only negligence of any kind charged. I cannot see the use of that, and I object to it on that ground.

(Testimony of Robert B. Smith)

COURT: Go ahead.

Q. Didn't you have to telephone to Wilson to come over and put in a switch plug? To put in one of those fuses?

A. I don't know the minutes we closed. I telephoned I wanted a workman to come over.

Q. You didn't know what was the matter, and had to telephone to a man to come over and put the fuse in, wasn't it? A. No, sir.

Q. A switch plug?

A. No, sir; didn't telephone for him to come, and set any one special fuse, no, sir.

Q. That is what he did?

A. Mr. Wilson found the fuse that was out.

Q. He found the trouble was a burnt fuse, which you hadn't found.

A. I hadn't found that one at that time.

Q. Do you know how long that delayed the bridge?

A. I don't know, sir.

Q. Now, Mr. Smith, during the time this bridge didn't open on the signal given by the Yucatan,—you heard the signal? Did you display a red flag or a red ball, or anything? A. No, sir.

Q. Did you ever read the regulations?

A. No, sir.

Q. You don't know what they were?

A. No, sir.

(Testimony of T. C. Conners)

REDIRECT EXAMINATION

Questions by Mr. MAURY:

Just one question I want to clear up. You are clear in your own mind as to the direction in which the boat was pointing when the draw did open?

A. I am clear, sir.

Q. What direction was it?

A. When the draw was open?

Q. Yes. A. Due west, sir.

Witness excused.

T. C. CONNERS

A witness called by the County, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. MAURY:

Mr. Conners, what is your occupation?

A. Bridge tender.

Q. What was your occupation the 3rd day of March, 1914? A. Bridge tender.

Q. Where? A. Broadway Bridge.

Q. And what part of the bridge did you work on?

A. On the east end.

Q. Were you there at the time the Yucatan went through the Broadway Bridge? A. Yes, sir.

Q. Through the draw? A. Yes, sir.

Q. Did you hear a signal for the Broadway Bridge on that day from the Yucatan? A. I did.

(Testimony of T. C. Conners)

Q. And the first signal you heard, which way was the boat pointing?

A. Well, she was pointing pretty near right across the river; due west a little; might have been a little to the south.

Q. Was that the first signal you heard?

A. Yes, sir.

Q. What position was she in when the draw opened, Mr. Conners? A. When the draw opened?

Q. Yes.

A. Well, she was a little to the northwest, I think, swinging towards the north.

Q. And the draw remained open from that time on, did it? A. Yes.

Q. You only heard one signal, did you?

A. I heard two.

Q. You heard two signals? A. Yes, sir.

Q. Which way was she pointed at the first signal?

A. The first signal I told you she was pointing pretty near west, but over to the south.

Q. That is pointed southwest?

A. Yes, and she was swinging; she was swinging towards the north, and it was a little by due west, when she whistled the second time.

Q. And at the time the draw was opened?

A. At that time, they rung the bell to clear the bridge.

COURT: At the time the second whistle was given, they rang the bell to clear the bridge?

A. Yes, sir.

(Testimony of T. C. Conners)

COURT: The draw wasn't open then?

A. Not at that time.

Q. How long did it take to clear the bridge?

A. Well, I should judge at that time, probably a minute and a half, or two minutes. Something like that if I recall; maybe not so long.

Q. The vessel was pointing north of west, northwest, when the draw was cleared.

A. Still swinging, yes, sir.

Q. And was still swinging? A. Yes, sir.

CROSS EXAMINATION

Questions by Mr. REED:

Were you the man that Smith talked to?

A. No, sir.

Q. He says he went down and talked to some one.

A. That might be the man on the west end of the bridge, the operator from the west end, and I was on the east end.

Q. What did you do then? What was your duty when that whistle blew?

A. To close the gate, the passenger gate, to save anybody from going on—cars and wagons.

Q. Does anybody keep any records over there?

A. Records of what?

A. Times or anything? A. What for?

Q. Whistles and boats and draws.

A. The operator keeps a record. Every boat that goes through, and the time it takes to go through.

(Testimony of T. C. Conners)

Q. Does the gateman?

A. The gateman, no. They have nothing to do with that.

Q. Did you hear the danger whistle, Mr. Conners?

A. Well, I didn't—I heard some whistle, but I think, if that danger whistle blew, it blew for the Boston, I don't think it blew for the bridge.

Q. Did you hear the danger whistle from the Yucatan?

A. I say I heard the whistle, but I wasn't positive what it was, but I say if a danger whistle, the danger whistle was blown for the Boston.

Q. Oh, the danger whistle of the Yucatan was blown for the Boston and not for the bridge?

A. I don't think so, because I don't know as she would have any right to blow, for the bridge at that time, when it blowed, when they claim it blowed.

Q. What would they do on the Boston? They couldn't use her.

A. Only to signalize they were coming in.

Q. Why should they go in if the bridge was open?

A. I didn't say it was open then. I said the bell rang when she was in that position; kind of north of northwest, and the bell rang, and we closed the gates and cleared the draw, and gave the proper signal, the bridge was cleared, and then there is about 40 or 50 feet of stationary span after they get clear lifted—as soon as we get clear of that, we give the operator a signal, and then we attend to getting people outside of the gates, and have to stand by the

(Testimony of T. C. Conners)

gates to keep it open from the rail, and still stop up a space in the middle, so that one can't get through it, a motorcycle, or anything of that kind; and we have to give our attention to that.

Q. If she blew her danger signal, while pointed northwest, and the draw was open, she must have blown for the Boston. A. How is that again?

Q. How was she when the danger signal blew?

A. I say, I don't know as I particularly heard any whistle, but I say if there was a danger whistle blew, it was blew because she was drifting on top of the Boston.

Q. Why should she drift on the Boston if the bridge was open?

A. That is what I want to know.

REDIRECT EXAMINATION

Questions by Mr. MAURY:

The bridge was opened, was it?

A. Yes, after the bell given and the signal given to operate.

Q. What direction was the boat when the draw was cleared?

A. I guess the boat was pretty well due north, about downstream north, going through.

Q. How is that again?

A. I say, she was pretty well north and south.

COURT: When the draw was cleared, she was about north and south?

(Testimony of T. C. Conners)

A. Pretty near, sir, when the signal was given the operator to open.

COURT: With the bow to the north?

A. Yes, sir.

Examination by the COURT.

Q. And was facing the bridge? A. Yes, sir.

Q. That is, when the signal was given to close the draw?

A. No, she wasn't quite in that position at that time, but at the time the bridge started to open, she was pretty near due north.

Q. What position was she in when the signal was given to clear the draw?

A. Kind of north northwest.

Q. Who gave the signal to clear the draw?

A. The foreman or operator, he rings the bell.

Q. Was Smith the operator at that time?

A. He was, sir.

Q. And then it took about a minute or a minute and a half to clear the draw?

A. Yes, probably a minute or a minute and a half or two minutes; something like that.

Q. What position was the Yucatan in when the draw began to open?

A. To a certain extent—you see there is a lot of people on the stationary span, and I had to throw my attention to them, to block the center of the bridge, and still keep a space between the end of the gate and the rail, so you won't jam anybody

(Testimony of T. C. Conners)

going through. But when I looked around, the bridge was opening, and she was pretty well due north.

Q. The bridge opening? A. Yes.

Q. How wide open?

A. I should judge it was probably open in that shape (indicating).

Q. 15 or 20 feet—25 feet across?

A. Yes, she was 40 feet across.

Q. 40 feet across? A. Must have been.

Mr. EVANS: How wide is that draw there?

A. That is 250 feet on both sides; about 125 each.

Q. (Court) Did you notice at that time, when the draw began to open, did you notice the Boston? Did you see the Boston?

A. I seen the Boston just afterwards, as the boat was swinging in on it.

Q. As what?

A. As the boat was drifting in on her, alongside of her.

Q. You saw the Boston after the boat was drifting?

A. Well, of course the Boston was moored there, and the Yucatan was drifting. She was going towards the east side, and of course after I got my gate closed, and my attention - - -

Q. Was that before or after the draw began to open?

A. That was after the draw began to open.

Q. After the draw began to open.

A. Yes, because when the draw began to open, I was tending gate, and the people were going through.

Witness excused.

(Testimony of W. E. Reed)

W. E. REED

A witness on behalf of the County, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. MAURY:

Mr. Reed, what is your occupation?

A. Bridge tender.

Q. On what bridge?

A. Broadway. I am on the Steel Bridge now.

Q. On what bridge were you employed the 3rd of March of this year? A. The Broadway Bridge.

Q. As bridge tender? A. Yes, sir.

Q. On what part of the bridge did you work?

A. West side.

Q. Do you remember the occasion of the Yucatan going through the draw on that day?

A. I do.

Q. Did you hear any signals given by the Yucatan for the bridge? A. I did.

Q. Which way was the Yucatan pointing the first signal you heard? A. South.

Q. Due south? A. Yes.

Q. Was she moving yet? A. No, sir.

Q. She was lying at the Globe Milling Company's dock pointing south? A. Yes, sir.

Q. Which way was she pointing the next signal you heard?

A. She was pointing towards the west, and then

(Testimony of W. E. Reed)

she drifted south, and hit her nose right into the steel bridge, and the captain, it looked to me, got scared, and blew the whistle, and they began to back.

Mr. EVANS: You don't mean the Steel Bridge.

A. Yes, put her nose up against the Steel Bridge.

Q. Which way was the boat pointed when the draw was cleared?

A. When the draw was cleared, to the northwest.

Q. When the draw was cleared?

A. He was more north than any way.

Q. More north than west? A. Yes.

Q. How far north, would you say?

A. Oh, quite a good deal; quite a good deal.

CROSS EXAMINATION

Questions by Mr. REED:

Mr. Reed, let me understand about that whistle. Do you understand that she whistled for the Broadway Bridge to close?

A. She whistled one whistle for it to open. She was against the dock; then a little while she swung out and got out in the stream and she whistled again; then she went over towards the steel bridge; drifted more that way; got her nose up there, and then she blew the danger signal, I call it, and kept backing, backing; still she was on a rope or something and she hit the Boston.

Questions by Mr. EVANS:

Which is the Steel Bridge?

(Testimony of W. E. Reed)

A. The Steel Bridge is south.

Questions by Mr. REED:

Were you the man Mr. Smith spoke to, about whether to open the draw or not?

A. Spoke to a fellow named Riggen, Jack Riggen.

Q. And you too? A. Yes, sir.

Q. And you held a consultation about whether to open the draw?

A. No, sir, he just came downstairs and said, "that fellow must be up against it now, and I said yes."

REDIRECT EXAMINATION

Questions by Mr. EVANS:

You said sounded the danger signal, when had her bow towards the Steel Bridge. A. Yes, sir.

Q. And the Steel Bridge is the one on the south?

A. Yes, sir.

Q. And you were on the Broadway Bridge?

A. Yes, sir.

Q. And he sounded the danger signal before he got headed towards you at all? A. Yes, sir.

Q. You have heard all these other witnesses testify?

A. That is the way it looked to me.

Q. They all testified he had swung plumb around, and was headed nearly in towards the Boston, before he sounded the danger signal.

A. She kept blowing the danger signal until she hit the Boston.

Q. Commenced when headed - - -

(Testimony of W. E. Reed)

A. For the Steel Bridge.

Q. Which way would the boat be headed when headed towards the Steel Bridge? A. South.

Q. Well, Mr. Reed, either I am confused, or you are; one of the two. The Steel Bridge is the one the railroad goes over, the Harriman Bridge?

A. Yes, sir.

Q. And you testified to begin with, that she - - -

Mr. REED: Their own witness.

Mr. EVANS: I know, but I am free to say we are much surprised by the testimony of this witness, and I ask the Court to indulge me.

COURT: Go ahead.

Q. You testified first the boat was headed south, when the first whistle was blown?

A. Yes, and then she swung out.

Q. Then she swung out? A. Yes, sir.

Q. She hadn't sounded any danger signal then?

A. No.

Q. She was headed towards the west?

A. Towards the south.

Q. About how any degrees? Do you have any idea?

A. I couldn't say; I never studied degrees. Her nose was right about south to the steel bridge.

COURT: You are confused now, I know. Mr. Evans is referring to the second whistle.

A. Second whistle, she was out in the stream.

COURT: What?

(Testimony of W. E. Reed)

A. She was out west.

COURT: Lying across the stream, was she?

A. Yes, sir.

COURT: At the second whistle?

A. Second whistle, yes, sir.

COURT: Now, when was the danger whistle?

A. The danger whistle, she was towards the Steel Bridge.

COURT: The danger whistle was after the second whistle? A. Yes.

COURT: Then she had turned south?

A. South.

COURT: She turned south between the second and the danger whistle? A. Yes.

COURT: She turned her bow south?

A. Yes.

COURT: Had she let go of the line then?

A. Well, I don't think she had.

COURT: You don't know?

A. I couldn't say to that.

COURT: And then after the danger whistle, did she turn around?

A. She kept backing; then she turned around.

COURT: She has to turn around to get her bow towards the Broadway? A. Yes, sir.

COURT: So she turned around after the danger signal?

(Testimony of W. E. Reed)

A. Yes, turned around, and then drifted over towards the Boston, and hit the Boston.

COURT: I understand you at the time the danger signal was given, and that was after the second signal whistle, her bow was pointing towards the Har-
riman Bridge? A. Yes.

COURT: Then she turned around?

A. She backed in and then turned around.

COURT: She backed in and turned so the bow was north? A. Yes, sir.

COURT: When did the bridge begin to open?

A. It opened when she turned around.

COURT: After the danger signal? A. Yes.

COURT: Didn't begin to open at the second signal at all? A. No.

COURT: Not until after the danger signal?

A. Not until after the danger signal.

Q. (Mr. Evans) Now, you remember the other day talking with Mr. Maury in my office.

A. Yes.

Q. Didn't you tell him that after giving the second whistle, the Yucatan kept swinging and was held fast by the stern line to the dock? A. Yes.

Q. And during all that time you kept clearing the traffic? A. Yes.

Q. And finally, when the Yucatan was about abreast of the current, you had the traffic cleared? (Reading from statement). A. Yes.

(Testimony of W. E. Reed)

Q. And were beginning to open the draw?

A. Yes.

Q. And the Yucatan swung a little further, and reached the point where she ought to have let loose, and headed for the draw she gave the danger signal, and backed up a little, and kept on swinging around in the same direction?

A. Yes, she kept swinging right around. That is right.

Q. Then she swung on down and hit the Boston?

A. Yes, she swung around and hit the Boston. I don't think she ever let go any rope.

RECROSS EXAMINATION

Questions by Mr. REED:

Was that statement written up before you went to the District Attorney's office or afterwards.

A. When I went to the District Attorney's office?

Q. Was it written before you went there or afterwards?

A. Written while I was there. Right before me.

Mr. MAURY: That was your own statement?

A. That is my own statement.

Mr. MAURY: It wasn't put up to you? You made that statement?

A. I made that statement myself.

Mr. REED: Here is an employee they are bringing here and forcing him to tell a story, not only that, but bringing here a sworn statement.

(Testimony of Captain W. W. Pope)

Mr. MAURY: It is not sworn.

Mr. REED: And making him say the thing was dictated by himself. I object to it.

COURT: Proceed with the examination. Tell what he knows about this matter.

Witness excused.

CAPTAIN W. W. POPE

A witness called on behalf of the County, being first duly sworn, testified as follows.

DIRECT EXAMINATION

Questions by Mr. MAURY:

Captain Pope, where do you live?

A. Portland, 441 West Park.

Q. What is your occupation?

A. Master and Pilot.

Q. How long have you been Master and Pilot?

A. Since '83.

Q. On this harbor all the time?

A. Yes, sir.

Q. And been working at that continuously, have you?

A. Yes, sir.

Q. Do you know the steamship Yucatan?

A. Yes, sir.

Q. Have ridden on her? A. Yes, sir.

Q. And you have handled boats of that size and character, in this harbor, have you?

A. Yes, sir.

Q. Now, you heard Captain Paulsen's testimony

(Testimony of Captain W. W. Pope)

as to the way she was turned around on this day in question, didn't you? A. Yes.

Q. You were sitting back and heard all this testimony? A. Yes.

Q. You heard him say the current was two knots an hour? A. Yes.

Q. And that the wind was about 15 miles—southwest, wasn't it?

Mr. REED: Southeast.

Q. Southeast wind, yes. You heard him describe the manner in which he turned the boat around?

A. Yes.

Q. Now, based on your experience as a pilot, in turning around the Yucatan at that place, under those circumstances, and in that manner, to go through the Broadway Bridge, at what time should the pilot cast loose from the stern line and head out for the draw?

A. Well, I should say from 100 to 120 degrees.

Q. And if a man hung on longer than 120 degrees, you would say he was hanging on too long under the circumstances, would you?

A. That depends on the circumstances.

Q. I mean, under those circumstances I related.

A. If the bridge was opening, he had a perfect right to let go. If not had a right to hold on.

Q. If the bridge was opening, when he reached 120 degrees, he should have let go? A. Sure.

Q. And if he did let go at 120 degrees, and the bridge was opening at 120 degrees, he should have

(Testimony of Captain W. W. Pope)

got through the bridge without trouble. Is that so? What would you say?

A. Under ordinary circumstances, he probably would have gone clear.

Q. Under the circumstances in this case?

A. Under ordinary circumstances.

Q. Yes; under these circumstances.

A. Well, I cannot say that. The wind and the current evidently caught him, and set him against the Boston.

Q. The wind and current.

A. The wind and current evidently set him against the Boston.

Q. Then if the bridge was open at that point, you couldn't attach any blame to the bridge, could you? If the bridge was open when he reached that point.

A. Of course - - -

Mr. REED: We don't claim that. We are not claiming any damage to the county if the bridge was open. I don't want to get off on that. We claim the bridge was not opened. If the bridge was open, we have nothing to do with it but pay.

Mr. MAURY: The testimony of Captain Paulsen was to the effect that the bridge was open at 120 degrees.

COURT: He said he let go at 120 degrees.

Mr. MAURY: And the bridge was open before he let go.

(Testimony of Captain W. W. Pope)

COURT: I don't know whether he testified to that or not.

Mr. MAURY: That was the testimony, I think, your Honor, that was emphasized in the last question. Captain Paulsen: Blew the danger signal at 120 degrees.

Mr. REED: Ask Captain Paulsen.

Mr. EVANS: I am satisfied to stand by the record.

Mr. MAURY: May he answer that question?

COURT: Certainly.

Q. If the bridge was opening at 120 degrees, and the line cast off at 120 degrees, under the circumstances in this case, could you attach any blame to the bridge if the boat didn't go through it right.

COURT: The boat did go through all right, but ran into the Boston in doing it.

Q. For anything that happened before it did go through, would the bridge be to blame?

A. Well, now, I was not there. I am only answering what I would do if there. I would probably let go at 120 degrees, taking chances on doing any damage, as Captain Paulsen did.

Witness excused.

COUNTY RESTS.

(Testimony of Captain A. C. Paulsen)

CAPTAIN A. C. PAULSEN

Recalled by the Claimant.

DIRECT EXAMINATION

Questions by Mr. REED:

Captain Paulsen, where did you say the boat was pointed when the danger signal was blown?

A. When the danger signal was blown?

Q. Yes.

A. When the danger signal was blown it was pointed about 110 or 120 degrees.

Mr. EVANS: It was at 110 or 120. Which was it?

A. I said in the former statement 120 degrees, I think.

Mr. REED: You can't tell exactly. That is all.

CROSS EXAMINATION

Questions by Mr. BECKWITH:

You say the bridge was opening when you blew the danger signal!

A. I would have no occasion to blow that danger signal if the bridge had been open.

Q. Under ordinary circumstances, if it happened to be a merchant ship in there, and had been in that position, you say you would have held onto your lines and gone up against the ship?

A. Taking chances going up alongside the ship.

Q. In other words, it would do less damage in

(Testimony of Rufus C. Holman)

going along the ship that way, than in moving and raking her?

A. I wasn't figuring that. It would do less damage to go up against another ship than against the Boston. That was all I figured.

Mr. EVANS: And you cast off at the time you sounded the danger signal?

A. No, I cast off as the bridge commenced to open.

CROSS EXAMINATION

Questions by Mr. EVANS:

When was that with reference to the sounding of the danger whistle?

A. After I sounded the danger signal.

Q. How soon? A. Very soon after.

Q. Before you hit the Boston, did you cast off or after? A. Well, it was after.

Q. And you hit the Boston just a few seconds after sounding the danger signal?

A. I hit the Boston as soon as the bridge opened, whether a few seconds, I don't know.

Q. You know which it was.

A. Pretty hard to remember a few seconds, you know.

Witness excused.

RUFUS C. HOLMAN

A witness called on behalf of the Claimant, being first duly sworn, testified as follows.

(Testimony of Rufus C. Holman)

DIRECT EXAMINATION

Questions by Mr. REED:

Please state your name and occupation?

A. Rufus C. Holman, Manufacturing Stationery.

Q. Mr. Holman, I will ask you whether or not you were present in my office on or about the 13th day of April, with Mr. Smith, who has just testified, and whether or not you heard Mr. Smith state the length of time between the first signal and the opening of the draw of the Broadway Bridge at the time of the collision?

Mr. EVANS: Objected to as incompetent, immaterial and irrelevant. Anything that Smith may have said wouldn't bind the county.

COURT: Wouldn't be for any purpose except to impeach Smith, and he said de didn't know.

Mr. REED: I know he did.

Witness: Shall I answer the question?

Mr. REED: No, don't answer.

COURT: That is only for impeaching purposes, and I am not impeaching Smith.

Q. What else is your occupation?

A. Well, I am County Commissioner.

Q. The County Commissioners have charge of the bridges, and employ the workmen, don't they?

A. They do. In this particular case, and at this time there was a superintendent of bridges and ferries, who had immediate control.

(Testimony of Rufus C. Holman)

Q. Appointed by the Commissioners?

A. Yes.

Q. And the gentleman that just objected is the District Attorney acting for the Commission?

A. The District Attorney has advised the County Commission.

Q. Who is objecting to your telling what the bridge tender said at that time.

COURT: I guess we will take that for granted.

Mr. REED: No, I want that in the record. Is that right?

A. Yes, it is.

Witness excused.

CLAIMANT RESTS

LIBELLANT RESTS

COUNTY RESTS.

Libelant's Exhibit "A".

CLW 520-8

ALU-HDH

UNITED STATES ENGINEER OFFICE

Second District

321 Custom House

Portland, Oregon

November 13, 1913.

The Oregon Naval Board,
Mr. H. Beckwith, Chairman,
Portland, Oregon.

Sirs:

Referring to written request dated October 18, 1913, for permission to drive a dolphin in the Willamette river, I have the honor to inform you that, upon the recommendation of the Chief of Engineers and under the provisions of Section 10 of the act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of War, subject to the special War Department conditions of August 13, 1913, (copy herewith) for such construction in general to place the dolphin in the Willamette river opposite Block No. 3, McMillens Addition to the City of Portland, Oregon, in accordance with the plans shown on the attached sheet; this authority to cease

and be null and void on October 13, 1916, unless previously revoked or renewed.

By direction of the Secretary of War:

J. F. McIndoe
Major, Corps of Engineers.

1 Inclo. (5)
accomp'g.

CONDITIONS PERTAINING TO ALL WAR
DEPARTMENT PERMITS FOR BRIDGE
FENDERS, BOOMS, DOLPHINS, PILES, OR
SIMILAR OBJECTS OF A TEMPORARY
CHARACTER IN NAVAGABLE WATERS
OF THE UNITED STATES.

(a) That this authority does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State assent to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION. (See *Cummings v. Chicago*, 188 U. S. 410.)

(b) That the work shall be subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality, who may

temporarily suspend the work at any time if, in his judgment, the interests of navigation so require.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interests of navigation, all expenses connected therewith shall be borne by the grantee.

(e) That if future operations by the United States require an alteration in the position of the bridge fender, boom, dolphin, pile, or similar object, or if the latter, in the opinion of the Secretary of War, shall cause unreasonable obstruction to the free navigation of the said waters, the grantee will be required, upon due notice from him, to remove or alter the bridge fender, boom, dolphin, pile, or similar object or obstruction caused thereby, without expense to the United States so as to render navigation reasonably free, easy, and unobstructed. No claim shall be made against the United States on account of such removals or alterations.

(f) That there shall be installed and maintained on the work by and at the expense of the grantee such lights and signals as may be prescribed by the Bureau of Lighthouses, Department of Commerce.

(g) That if not otherwise specified in the permit, this authority, unless previously revoked under paragraph (e) above or specifically extended, shall

cease and be null and void at the end of the third full calendar year after its date.

(91171--C. of E.)

By authority of the SECRETARY OF WAR;

WM. T. ROSSELL

Brig. Gen., Chief of Engineers, U. S. Army

WAR DEPARTMENT,

Office of the Chief of Engineers,

Washington, D. C., August 13, 1913.

U. S. District Court

FILED

Oct 28 1914

G. H. Marsh, Clerk

District of Oregon.

W R & N Co
Property
Future Dock Development

WILLAMETTE RIVER

AINSWORTH DOCK
Under 200
Elev Lower 170

SP DOCK
FLORE (WAIN & MILLING CO)
DOCK
2 54 FT

E

COOLPHIN

ST MARGIN

CROSBY

LARRABEE

MC MILLER
ADD
BENTON

MC MILLEN
TO

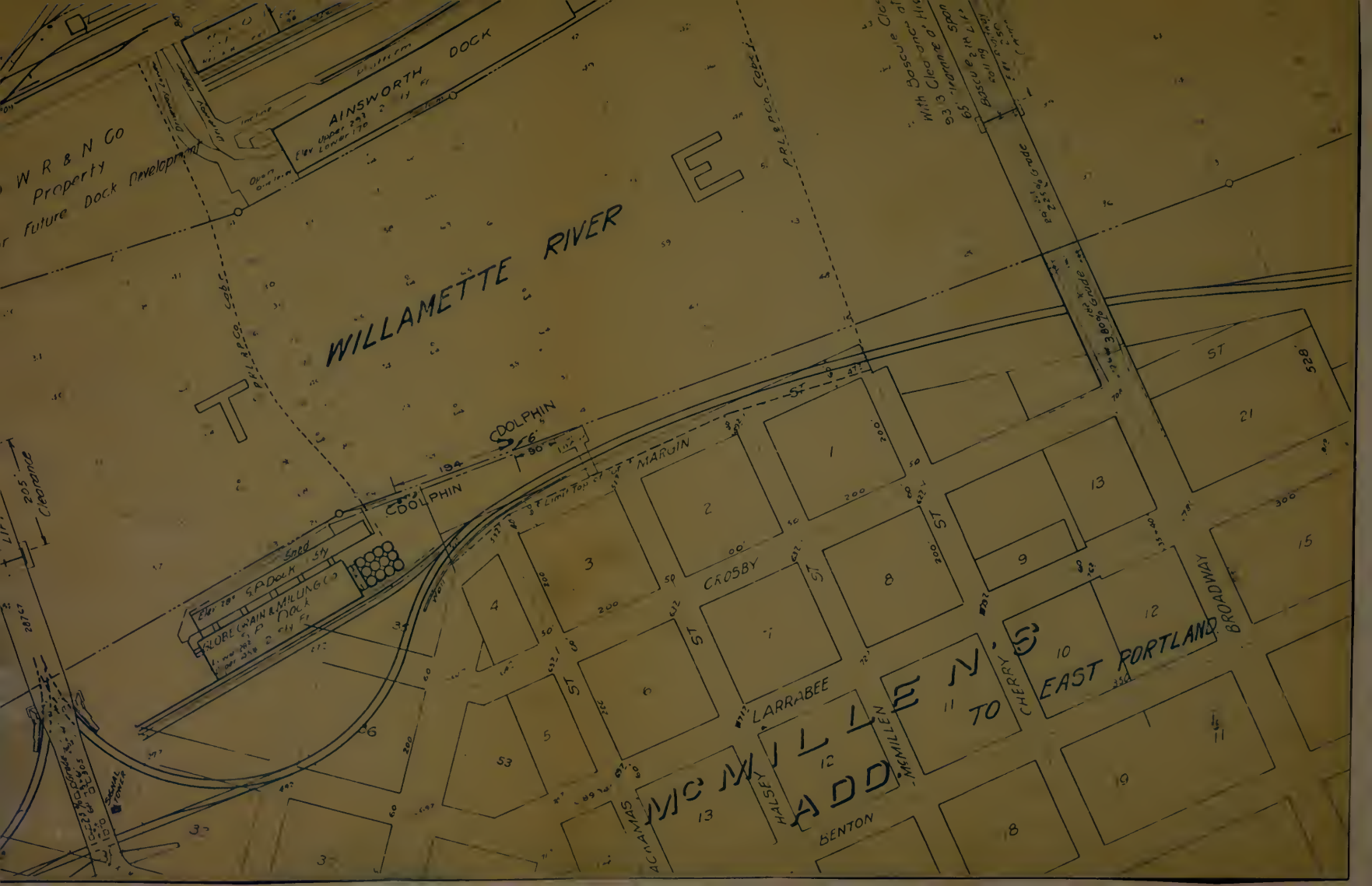
EAST PORTLAND

205
Clearance

Clearance of
With Clearance of
63.3
65' - 11mm 2.18 L.F.
Bascul 2.18 L.F.
coll 19
Elev 2.50

300-0-333-2-03
18% GRADE
3.80% GRADE

880-0-0-88



Libellant's Exhibit "B-2."

THIS AGREEMENT.

Entered into this seventeenth day of June, 1911, by and between the United States, represented by R. F. Nicholson, Acting Secretary of the Navy, party of the first party, and the State of Oregon, represented by Oswald West, Governor, party of the second part,

WITNESSETH, That the said party of the first part, under and in pursuance of an act of Congress approved August 3, 1894, (Statutes at Large, volume 28, page 219), hereby agrees to loan temporarily to the State of Oregon the U. S. S. Boston, together with her apparel, charts, books, and instruments of navigation, as per invoices furnished with the vessel, upon the following terms and conditions, viz:

1. The said vessel shall be used only by the regularly organized Naval Militia of said State for the purposes of drill and instruction.

2. When the organization of the Naval Militia of the State shall be abandoned, or when in the judgment of the President the interests of the naval service shall so require, the vessel, together with her apparel, charts, books, and instruments of navigation, shall be immediately restored to the custody of the Secretary of the Navy in as good condition as when received by the State of Oregon, reasonable wear and tear excepted.

3. The State of Oregon hereby agrees to keep said vessel in good order and proper repair as set forth in the next succeeding paragraph and to abstain from making or causing to be made any alteration in the hull or machinery, or in any arrangement of the hull, machinery, spars, boats, or other equipment or apparel of the vessel, except such as may be authorized in writing by the Secretary of the Navy.

4. The repairs to the said vessel, her apparel, equipment, etc., shall be made at Government expense when authorized by the Secretary of the Navy on his own initiative or on the recommendation of the said State of Oregon.

5. The said U. S. S. Boston, together with her apparel, boats, charts, books, instruments of navigation, etc., shall, at all times while in the custody of the State, be open to inspection by such persons as the Secretary of the Navy may designate for the duty.

6. The State of Oregon hereby assumes, and will hold the United States free and acquitted from, all port, pilotage, and other charges accruing against said vessel while in the possession of the State.

7. The State will place in charge of the navigation of the said vessel a competent officer who, under the navigation laws, would be qualified and authorized to direct and control the movements of a vessel of like size, draft, character, and class in private ownership, and will not permit the vessel to be navi-

gated except under the direction and control of such officer. Further, the State will, when appropriate and necessary, employ qualified local pilots.

8. The State will place in charge of the boiler and machinery of said vessel a duly qualified and licensed engineer who, under the navigation laws, would be recognized as competent and authorized to assume sole charge of the engines and machinery of a vessel of like size, character, and class in private ownership; and will not permit steam to be raised or maintained, or the engines of said vessel to be moved, except under competent supervision.

9. The State further agrees to protect and defend the United States against any and all liability whatsoever growing out of claims for damages to property, personal injuries or loss of life, caused by said vessel while in collision or by touching or striking any vessel or structure on shore, afloat or submerged, or caused directly or indirectly by any explosion or accident of any kind whatsoever, occurring to, in or upon said vessel while in the charge and custody and under the control of representatives of the State; and does hereby release, discharge, and acquit the United States and all officers thereof from any liability or responsibility due to such cause.

10. Should any difference arise between the parties to this agreement as to any matter or thing connected therewith or arising therefrom, the same shall be submitted for decision to the Assistant Secretary of the Navy for the time being, and his determina-

tion thereof shall be binding and conclusive upon both parties.

The said State of Oregon, represented by Oswald West, Governor, hereby acknowledges the receipt of the U. S. S. Boston, at the port of Navy Yard, Bremerton, Washington, from the United States, together with her apparel, boats, charts, books, instruments of navigation, etc., as per invoices furnished with the vessel, and agrees to surrender the said ship, her boats, apparel, equipment, etc., at any time when required so to do by the Secretary of the Navy, or when the organization of the State Naval Militia shall be abandoned.

In Witness whereof the respective parties hereby have hereunto set their hands and seals the day and year first above written.

Signed and sealed in the presence of

(signed) OSWALD WEST

as

Governor of the State of Oregon.
The United States,

(SEAL OF THE STATE OF OREGON)

By

(signed) R. F. NICHOLSON,

As Acting Secretary of the Navy.

By the Governor—

(signed) BEN W. OLCOTT,

Secretary of State.

vs. The State of Oregon and Multnomah County 221

(Signed) LUSTAM B. JOHNSON

Solicitor,

as to R. F. NICHOLSON,

Acting Secretary of the Navy

(SEAL OF THE NAVY DEPARTMENT)

U. S. District Court

FILED

Oct 28 1914

G. H. Marsh, Clerk

District of Oregon.

Libelant's Exhibit "C-2."

THIS AGREEMENT, Made and entered into in duplicate this second day of February, 1914, by and between the OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, A private corporation, party of the first part, and the OREGON NAVAL BOARD, party of the second part, WITNESSETH:

WHEREAS, the said party of the second part, through its proper officers has requested that a permit be granted by the first party herein for the construction and maintenance of a pipe line, sidewalk and stairway and for the installation of a wire on, the property of the party of the first part on the East bank of the Willamette River, between Halsey and Clackamas Streets, if extended, as shown on the blue

print hereto attached and by this reference made a part hereof, for a period of five (5) years from February 2, 1914, and

WHEREAS, the Oregon-Washington Railroad & Navigation Company is willing to grant this permit for the construction and maintenance of said pipe line, sidewalk and stairway and for the installation of said wire, upon the express understanding and agreement that the sidewalk and stairway are not and will not be considered a public or private way or easement, and that the permission hereby granted is not to be considered as in any manner creating any obligations on the part of the party of the first part to maintain said sidewalk and stairway, and that no liability is to be incurred on the part of said party of the first part, by reason of the permission hereby granted, and

WHEREAS, the Oregon Naval Board is willing to accept the conditions hereby imposed by Oregon-Washington-Railroad & Navigation Company, this agreement WITNESSETH:

THAT the said party of the first part hereby grants permission to the said party of the second part to construct and maintain a three-fourths (3-4") inch pipe line, a sidewalk and stairway and to install a wire upon and over the property of the party of the first part on the East bank of the Willamette River between Halsey and Clackamas Streets, if extended, as shown in red on blue print hereto attached.

It is hereby distinctly understood and agreed that the said party of the first part is not in any way to be liable for any loss, damage or injury that may result to any person or persons growing out of the existence or maintenance of said pipe line, sidewalk, stairway or wire, and that said sidewalk and stairway is not to be deemed in any manner an easement or public way, and that this agreement is to be considered solely as a license, whereby the Oregon Naval Board is authorized to so maintain said sidewalk and stairway, and

IT IS FURTHER AGREED, that this permit is to run for a period of five (5) years form February 2, 1914, in consideration of (\$1.00) Dollar, the receipt of which is hereby acknowledged, and in further consideration of the permit hereby granted the party of the second part hereby undertakes and agrees to use only the ground on which this permit is granted as hereinbefore specified and that it will at all times, save harmless and protect the said party of the first part against any liability or claim of any kind whatsoever growing out of, or in any manner connected with or resulting from the construction or maintenance of said pipe line, sidewalk and stairway or from the installation or maintenance of said wire.

It is hereby understood and agreed that said pipe line, stairway, sidewalk and wire are for the sole purpose of serving the U. S. Battleship "Boston," which said Battleship is moored in the Willamette River adjacent to the said sidewalk and stairway constructed on the premises hereinbefore described.

It is hereby mutually agreed by and between the parties hereto, that the party of the first part shall have the right to terminate this agreement in case the said party of the first part shall desire the use of said premises at any time upon the giving of thirty (30) days' notice thereof, mailed to the party of the second part at Portland, State of Oregon.

IN WITNESS WHEREOF, the party of the first part has caused this agreement to be signed by its Vice President and General Manager, and the party of the second part has hereunto subscribed its name, the day and year above written.

OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY,

By J. P. O'BRIEN
Vice-President & General Manager

OREGON NAVAL BOARD
By G. F. BLAIR,
Lt.Comdr. O.N.M., Sec't'ry.

Approved

M. J. BUCKLEY
General Superintendent

APPROVED AS TO FORM

C. C. ZWEIGART
For General Attorney

Approved as to Description

GEO. W. McMATH
Tax and Right of Way Agent.

(Seal

ADJUTANT GENERAL,
STATE OF OREGON
Official Copy).

U. S. District Court
FILED
Oct 28 1914
G. H. Marsh, Clerk
District of Oregon.

Claimant's Exhibit 5.

Form No. 1030.—Met'l.—Pacific Coast.

U. S. DEPARTMENT OF AGRICULTURE,
WEATHER BUREAU
MONTHLY METEOROLOGICAL SUMMARY.

Station, Portland, Oregon; month, March, 1914.

Date	Temperature (Degrees Faren- heit.)			Precipitation (In inches and hundredths.)	Char- acter of day.	Reading of River Gage 8 a.m.
	Max.	Min.	Mean.			
3	49	39	44	.22	Cloudy	10.1

Note.—“T” indicates trace of precipitation.

Edward A. Beals,
District Forecaster Weather Bureau.

U. S. District Court
FILED
Oct 28 1914
G. H. Marsh Clerk
District of Oregon.

Claimant's Exhibit 6.**RULES AND REGULATIONS**

To Govern the Drawbridges Across the Willamette
at Portland, Oregon.

THE LAW.

Extract from River and Harbor Act of August 18, 1894:

“Sec. 5. That it shall be the duty of all persons owning, operating, and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars, nor less than one thousand dollars, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of

the court: *Provided*, That the proper action to enforce the provisions of this section be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: *Provided further*, That whenever, in the opinion of the Secretary of War, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law, and any violation thereof shall be punished as hereinbefore provided."

THE REGULATIONS

Pursuant to the provisions of the law above quoted, the following regulations are published and will take effect from and after the 4th day of August, 1910:

Section 1. When at any time during the day or night a vessel, unable to pass under the closed drawspan of any one of the above bridges, approaches it from a distance of over 1,000 feet, the person in command of such vessel shall cause to be sounded, when said vessel shall be at a distance of not less than 1,000 feet, the prescribed signal and shall repeat this signal until it is understood at the bridge.

Section 2. When such vessel is about to leave a landing 1,000 feet or less from the drawbridge, with the intention of passing through the draw, the per-

son in command shall cause the prescribed signal to be sounded at such interval before leaving the landing that the draw may be opened in time for the vessel to pass.

Section 3. The following signals are prescribed for vessels wishing to have the draws opened:

“Oregon Railroad and Navigation Company’s bridge.” One long blast of whistle, followed quickly by one short blast.

“Burnside Street Bridge.” One long blast of whistle, followed quickly by two short blasts.

“Morrison Street Bridge.” One long blast of whistle, followed quickly by three short blasts.

“Madison Street Bridge.” One long blast of whistle, followed quickly by four short blasts.

For the passage of vessels or water crafts of any description propelled, by other than steam power, like signals shall be given by horn or trumpet, when a whistle is not available.

Section 4. All vessels when passing any bridge shall be moved as expeditiously as is consistent with established rules governing speed in the harbor of Portland.

Section 5. All vessels, crafts or rafts, not self-propelled, navigating the river, for which the opening of any bridge may be necessary, shall, while passing such bridge, be towed by a suitable self-propelled boat.

Section 6. Upon hearing the signals hereinbefore prescribed, the engineer or operator of a drawbridge

shall promptly open the draw, except between the hours of 6:30 a. m. and 7:00 a. m., 7:15 a. m. and 7:45 a. m., and 8:05 a. m. and 8:30 a. m.;

Provided, That the draw shall be promptly opened for the passage of sea-going vessels of 250 tons or over upon the prescribed signal at any hour of the day or night, and,

Provided further, That when any vessel shall arrive at any bridge within five minutes before 6:30 a. m., 7:15 a. m. or 8:05 a. m., it shall be passed promptly through all the bridges in the direction in which it is moving and shall not be stopped between bridges.

Section 7. In case the draw can not be immediately operated when the prescribed signal is given, a red flag or ball by day, and a red light by night, shall be conspicuously displayed.

JOHN C. SCOFIELD

Assistant and Chief Clerk,
For the Secretary of War.

WAR DEPARTMENT,

August 4, 1910.

Section 6 of the foregoing regulations is hereby temporarily modified to read as follows:

Section 6. Upon hearing the signals hereinbefore prescribed, the engineer or operator of a drawbridge shall promptly open the draw, except between the hours of 6:30 a. m. and 7:00 a. m., 7:15 a. m. and 7:45 a. m., 8:05 a. m. and 8:30 a. m., 5:15 p. m., and 5:45 p. m. and 6:00 p. m. and 6:30 p. m.;

Provided, That the draw shall be promptly opened for the passage of sea-going vessels of 250 tons or over upon the perscribed signal at any hour of the day or night, and,

Provided further, That when any vessel shall arrive at any bridge within five minutes before 6:30 a. m., 7:15 a. m., 8:05 a. m., 5:15 p. m., or 6:00 p. m., it shall be passed promptly through all the bridges in the direction in which it is moving and shall not be stopped between bridges.

ROBERT SHAW OLIVER,

Assistant Secretary of War.

WAR DEPARTMENT,

June 15, 1911.

Filed October 28, 1914. G. H. Marsh, Clerk.

CLAIMANT'S EXHIBIT No. 7.

ORDINANCE No. 17591.

An Ordinance defining the duties of Harbor Master, and regulating the Port of the City of Portland; and repealing all ordinances and parts of ordinances in conflict herewith.

“Section 1. That for the better protection of persons passing to and from ships and wharves in the City of Portland, it shall be the duty of every owner, lessee, or proprietor of every dock or wharf, to close, and keep closed when not in actual use, by sufficient gates, barricades, or hatches, all slips or

runways used as a passage-way between the dock or wharf and a ship, and to keep every dock and wharf sufficiently lighted at night when a vessel is made fast thereto."

"Sec. 2. Vessels arriving within the corporate limits of the City of Portland, if obliged to anchor, shall be anchored below the Albina Ferry, and on the west side of the main ship channel; such vessels shall be moored with bower anchor forward and another bower anchor ready to drop, and a stream anchor out astern, to prevent the vessel from swinging across the main ship channel and obstructing the same, and shall have a boat swung out ready for instant use at all times. Vessels moving from the docks or wharves to anchor in the river while waiting for cargo, and shall be moored under the same conditions as other vessels, so as to leave a clear channel for vessels coming up or going down the river. Pilots and masters of towboats bringing vessels to anchorage in the Harbor of the City of Portland, shall see that the vessel in their charge is moored so as to comply with these regulations. Vessels must not be anchored or moored in the fairway channel within the City limits, neither must they moor or anchor within four hundred (400) feet of any bridge or ferry line."

"Sec. 3. Vessels moving from one dock or wharf to another or from one place to another, when necessary to pass through the draw of any bridge or cross the line of any ferry boat, or when moving from a

dock or wharf on one side of the Willamette River to a dock or wharf on the opposite side of said river, shall, in order to prevent the obstruction of travel, have the service of a tug, provided this section shall not apply to vessels when propelled by their own engines."

"Sec. 4. A vessel anchored or moored in the harbor or laying at the dock, must at all times have at least one officer and three seamen on board capable of taking proper care of the vessel. If it becomes necessary, in order to facilitate navigation or the commerce of the port or for the protection of other vessels or property, a vessel may be removed by order of the Harbor Master at the expense of the owner, and the owner and vessel shall be liable for all damages and costs that shall arise thereby."

"Sec. 5. If any vessel be sunk or stranded within the port, or if any obstruction be found to impede navigation within said port, the owner of the vessel or property by which such obstruction is caused, shall immediately notify the Harbor Master of the position of such obstruction, and shall exhibit on or near such vessel or obstruction such flags, masts or lights as the Harbor Master may direct. Two red lights at night and two red flags by day with bell sounded in case of fog."

"Sec. 6. The master or person having the charge or command of any vessel coming to or lying alongside any wharf or vessel berthed at a wharf shall, both before and during such time as such vessel is

moored or stationed at such wharf, or vessel berthed at a wharf, have the anchors stowed, the jib-boom in, the lower yards topped and braced sharp up, and all other projections stowed within the rail of 'the said vessel."

"Sec. 7. In order to facilitate the removal of vessels from their berths at any wharf or place of mooring, or for other reasons, the Harbor Master may direct the master or person in charge of any vessel to slack away hawsers, cables or other fastenings of any ship, or to have her yards topped or braced fore and aft, and her martingale and jib-boom to be rigged in. The master or person in charge of any vessel shall forthwith comply with such directions given by the Harbor Master."

"Sec. 8. Every vessel lying alongside a wharf, or vessel lying alongside a vessel berthed at a wharf, shall from sunset until sunrise, be provided with proper lights, and shall be provided continuously with such appliances in the way of gangways and manropes as may, in the opinion of the Harbor Master, or in fact, be necessary for the convenience and safety of persons passing to and from such vessels, and every gangway fixed for the purpose of giving the crew or other persons access to the ship after dark shall be brightly illuminated by the best available means as long as such gangway is in communication with the shore, and a watch shall be continually set upon said gangway."

"Sec. 9. Every vessel lying at a wharf shall have such a safety net suspended from a stage or other

appliance that may be rigged for the purpose of facilitating ingress and egress to the said vessel as will prevent persons falling into the water in the event of their slipping off the said stage or other appliance that may be rigged for the aforesaid purpose."

"Sec. 10. Every hawser or rope by which a vessel is made fast to the wharf or shore shall be defended by at least one metal disc of such size and pattern as has been approved by the Harbor Master, and every such metal disc shall, if not affixed to the hawser or rope to the satisfaction of the Harbor Master, be removed to a position on the said hawser or rope pointed out by him, and the ship fended off a distance of six feet."

"Sec. 11. All openings in the ship's side shall be closed at sundown, gangways raised clear of the dock, and all cargo skids shall be unrigged at sundown except during such time as they are actually in use, when they shall be brightly illuminated. Ballast logs when used by ships are to be properly fastened by chains or wire cables in such a manner that they can not float through their fastenings if disturbed by the displacement of water caused by passing steamers."

"Sec. 12. Combustible matter, such as pitch, tar, resin, or oil, shall not be heated on board any vessel lying at anchor in the port, and all combustible matter shall be heated in a boat astern at a proper distance from such vessel: provided, that combustible matter shall not be heated while such vessel is lying alongside a wharf."

“Sec. 13. Oil, spirit, or inflammable liquid shall not be pumped or discharged from any vessel or tank into the waters of the port.”

“Sec. 14. It shall be unlawful for goods or cargo to be placed on any street or roadway near or at the approach to any wharf or dock without the permission of the Harbor Master having first been obtained.”

“Sec. 15. When loading into or discharging from any vessel, coal, ballast ashes, or any material whatsoever, a good and sufficient tarpaulin shall be so stretched and spread as to effectually prevent any lading or material from falling into the waters of the port.”

“Sec. 16. It shall be unlawful for any person upon any vessel or wharf within the port, or upon any street or roadway immediately adjoining a wharf to tout or solicit anyone to proceed as a passenger by any vessel, or to take up his or her residence at, or proceed to, any boarding house or hotel.”

“Sec. 17. All stray boats, timber, or other articles found within the port shall be immediately delivered up to the Harbor Master, in whose custody they shall remain until claimed by the proper owners, who shall pay all expenses thereon, including a charge for keeping and storing the same. If such articles are not claimed within a reasonable time, they shall be sold in the manner provided by the Charter for the sale of property.”

“Sec. 18. It shall be unlawful for any person to throw, place or leave any dead animal or putri-fying matter into or on any part of the port.”

“Sec. 19. It shall be unlawful for any person to place or deposit any rubbish, refuse matter, or articles of any offensive character, likely to create a nuisance upon any wharf, or wharf road, or street leading to a wharf, except at the places and in the manner pointed out by the Harbor Master.”

“Sec. 20. It shall be unlawful for any person to furiously or negligently ride or drive through, upon, or along any wharf, or near approach thereto, or to drive on the wrong side of the road, or be away from his horse or cattle so as to be unable to have the full control of such horse or cattle.”

“Sec. 21. It shall be unlawful to fasten vessels or floating timber to either of the bridges or to any support thereof.”

“Sec. 22. It shall be unlawful for any person or persons to bathe from any wharf or in any part of the port which is open to public view.”

“Sec. 23 It shall be unlawful for any person or persons, firm or corporation, to dump or deposit or throw or cause to be dumped, deposited or thrown into the Willamette River, within the limits of the City of Portland, any sawdust, slabs, gravel, loose earth or other debris which may tend to obstruct the channel of said river, or to dump or deposit or cause to be dumped or deposited any sawdust, slabs,

ashes, gravel, loose earth, rubbish, or other debris, at any point within the corporate limits of the City of Portland, where the same will be carried away and into the said river, or into or through any sewer within the City limits, by freshets or otherwise.”

“Sec. 24. It shall be unlawful to run or propel a steamboat on the Willamette River within the corporate limits at a greater speed than eight miles an hour.”

“Sec. 25. The Harbor Master shall have the right to call on the Chief of Police to aid him in the execution of his duties and he shall have full power to arrest any person or persons who obstruct or resist or refuse to obey his legal orders and requirements and bring him or them before the proper court, or courts having jurisdiction in the case, for punishment.”

“Sec. 26. The Harbor Master is hereby authorized to enter upon and inspect any vessel to ascertain the kind and quality of merchandise or cargo thereon or her condition in any respect, or the condition of her crew, and no person shall hinder or molest the Harbor Master, or refuse to allow him to enter upon any vessel for any purpose specified in this section.”

“Sec. 27. It shall be the duty of the Harbor Master to inspect the harbor frequently, and to report any violation of this or any other City ordinance, or any law respecting the use of wharves, docks,

landings, vessels or harbor, to the proper authorities of the City of Portland, the United States, or the State of Oregon, as the case may be, to be acted upon as provided by law in cases where he is not empowered by this ordinance to act himself."

"Sec. 28. It shall be unlawful for any steamship, vessel, or other water craft to enter the City limits while having on board any blasting powder, gunpowder, dynamite or other explosive compounds used for blasting purposes. But this shall in no wise be construed as to include water craft of any description having any such cargo on board which may be passing up or down the Willamette River to points outside the City limits."

"Sec. 29. No person shall discharge blasting powder, gunpowder, dynamite, or other explosive substances from any vessel or steamship except from ships' sides or tackles, and before the vessel shall have been hauled up to the wharf. No water craft shall be permitted to remain at the wharf longer than twenty-four hours after receiving gunpowder, blasting powder, or other explosive substances on board. All gunpowder, blasting powder, dynamite or other explosive substances deposited on the wharf for shipment shall be immediately passed on board the vessel which is to receive the same."

"Sec. 30. Any person or persons, firm or corporation violating any section of this ordinance or part thereof, or fail to comply with any of its provisions, shall upon conviction thereof in the Municipal Court

of said City, be fined not less than \$10.00 nor more than \$200.00, or by imprisonment in the City jail for not less than five days nor more than ninety days, or by both such fine and imprisonment."

"Sec. 31. All ordinances or parts of ordinances in conflict herewith be and are hereby repealed."

Passed the Council March 11, 1908.

A. L. BARBUR,
Auditor of the City of Portland.

Submitted to the Mayor, March 13th, 1908.

Approved, March 17th, 1908.

H. LANE, Mayor.

Filed October 28, 1914.

G. H. Marsh, Clerk.

And afterwards, to wit, on the 22nd day of January, 1915, there was duly filed in said Court and cause a stipulation to send original exhibits to Court of Appeals, in words and figures, as follows, to wit:

Stipulation.

It is hereby stipulated and agreed between the parties in the above entitled suit that printed copies of the photographs introduced as exhibits at the trial herein for the apostles on appeal shall not be required, and that an order may be granted by the

above entitled court sending the original photographs introduced as exhibits as aforesaid as a part of the apostles on appeal to the appellate court.

Portland, Oregon, January 1915.

J. A. BECKWITH
of Proctors for Libellant.

SANDERSON REED
Proctors for North Pacific S. S. Co. Claimant.

WALTER H. EVANS,
Proctor for County of Multnomah.

Filed January 22, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Thursday, the 4th day of February, 1915, the same being the 82nd Judicial day of the Regular November, 1914, Term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Based on the stipulation of all of the parties hereto,

IT IS ORDERED that the appellant be permitted to forward with the apostles on appeal the original photographs introduced as exhibits at the trial herein in place of copies thereof, and the clerk is hereby ordered to omit making copies of the photographs introduced at the trial herein as exhibits and to forward the original photographs introduced as exhib-

its with the apostles on appeal to the appellate court.
Dated this 3rd day of Feb. 1915.

R. S. BEAN,
Judge.

Filed February 3, 1915. G. H. Marsh, Clerk.

UNITED STATES OF AMERICA,
DISTRICT OF OREGON.—SS.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing apostles on appeal in the case of the Steamship "Yucatan", the State of Oregon, Libellant and Appellee, the North Pacific Steamship Company, Claimant and Appellant and Multnomah County, Respondent and Appellee, in accordance with the law and the rules of this Court and that the foregoing apostles contain a true and correct transcript of the record and proceedings had in said court as the same appear of record and on file at my office and in my custody, as provided by law and the rules of court.

And I further certify that the cost of the foregoing record is \$ for Clerk's fees for preparing transcript of record and \$ for printing said record, and that the same has been paid by said appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland in said District this day of 1915.

Clerk.

